**Membership Interest Purchase Agreement (Simple Single Owner)**

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**MEMBERSHIP Interest Purchase agreement**

This membership interest purchase agreement (this “**Agreement**”) is entered into as of [\_\_\_\_\_] (the “**Effective Date**”), and is ]between [\_\_\_\_\_], a [STATE] [corporation/limited liability company] (the “**Buyer**”), and [\_\_\_\_\_] (the “**Seller**”).

The Seller desires to sell and the Buyer desires to purchase all of the membership interests of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [STATE] limited liability company (the “**Acquired Company**”), for the consideration and on the terms set forth in this Agreement.

The Seller is the sole member of the Acquired Company and owns 100% of the membership interests of the Acquired Company (the “**Purchased Interest**”).

The parties, therefore, agree as follows:

# **Purchase and Sale of the Purchased Interest**

## As of the Effective Date the Seller is selling, delivering, and conveying to the Buyer, and the Buyer is purchasing from the Seller, the Purchased Interest and all rights thereto or evidenced thereby, including all rights to receive and share in distributions thereon, free from any liens or encumbrances whatsoever.

## Contemporaneously with execution and delivery of this Agreement, the Seller is delivering to the Buyer (the “**Seller Closing Deliverables**”):

1. certificates representing the Purchased Interest, endorsed (or accompanied by signed stock powers) for transfer to the Buyer;
2. a certificate of an officer of the Seller certifying that attached thereto are true and complete copies of (A) the Acquired Company’s articles of organization and all amendments, (B) the Acquired Company’s bylaws and all amendments, and (C) all resolutions adopted by the board of directors and shareholders of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;
3. a tax clearance letter issued by the State of [\_\_\_\_\_]; and
4. the resignation of the Seller as an officer[ or manager] of the Acquired Company.

## Contemporaneously with execution and delivery of this Agreement, the Buyer delivering to the Seller (the “**Buyer Closing Deliverables**”):

1. the Closing Cash, as provided in section 2; and
2. [\_\_\_\_\_].

# **Purchase Price**

## The purchase price is [\_\_\_\_\_] [plus any applicable Contingent Purchase Price under Schedule 2] (the “**Purchase Price**”) as adjusted as provided in section 2(b). The Buyer shall pay the Purchase Price as follows:

1. $[\_\_\_\_\_] deposit (the “**Deposit**”)[, which has already been paid, will be credited to the Buyer]/ [will be paid by the Buyer to [\_\_\_\_\_], to be held in escrow pending the Closing].
2. $[\_\_\_\_\_] will be paid by bank cashier’s or certified check or wire transfer on the Effective Date (the “**Closing Cash**”).
3. The Adjustment Amount will be paid by the Buyer or the Sellers as provided in section 2(b).
4. [(4) Any Contingent Purchase Price will be paid in four equal quarterly payments on the twentieth day of the first month of each calendar quarter beginning the first quarter after the Determination Date (as defined in Schedule 2); provided, however, that the Buyer will be permitted to set off from the Contingent Purchase Price any amounts paid by the Buyer with respect to tax liabilities of the Seller or any other liability owed by the Seller or the Owner to the Buyer under this Agreement.]

## The “**Adjustment Amount**” will be the difference, if any, between the Net Working Capital as shown on the Closing Balance Sheet (the “**Closing Date Net Working Capital**”) and the Net Working Capital as shown on the Interim Balance Sheet referred to in section 10 of Schedule 3 (the “**Interim Net Working Capital**”). If the Closing Date Net Working Capital is less than the Interim Net Working Capital, then the Seller shall pay the Adjustment Amount to the Buyer. If the Interim Net Working Capital is less than the Closing Date Net Working Capital, then the Buyer shall pay the Adjustment Amount to the Seller. All payments under this section 2(b) must be made within three Business Days after the Closing Balance Sheet and Adjustment Amount become binding on the parties under this section 2(b). “**Net Working Capital**” means (1) the sum of the Acquired Company’s accounts receivable and [\_\_\_\_\_] less (2) the sum of the Acquired Company’s accounts payable and [\_\_\_\_\_].

## The Buyer shall prepare a balance sheet of the Acquired Company as of the close of business on the Closing Date (the “**Closing Balance Sheet**”). The Closing Balance Sheet shall be prepared using the same accounting principles, policies, and practices according to which the balance sheet for the Most Recent Fiscal Month End referred to in section 10 of Schedule 3 (the “**Interim Balance Sheet**”) was prepared. The Buyer shall deliver the Closing Balance Sheet and the determination of the Adjustment Amount to the Seller within 60 days following the Closing Date.

## Upon execution of such access letters as may be reasonably required by the Buyer, the Buyer shall give the Sellers reasonable access during business hours to (and copies of) the Buyer’s and its advisors’ books, records, and other documents used in preparation of the Closing Balance Sheet and the determination of the Adjustment Amount (other than work papers that the Buyer considers proprietary).

## If within 30 days following delivery of the Closing Balance Sheet and the determination of the Adjustment Amount to the Sellers, the Sellers have not given the Buyer notice of an objection as to any amounts set forth on the Closing Balance Sheet or the determination of the Adjustment Amount (the “**Objection Notice**”), then the Closing Balance Sheet and the determination of the Adjustment Amount as prepared by the Buyer will be final, binding, and conclusive on the parties.

## If the Seller timely gives the Buyer an Objection Notice and if the Buyer and the Seller fail to resolve the issues raised in the Objection Notice within 30 days after giving the Objection Notice, then the Seller and the Buyer shall submit the issues remaining in dispute for resolution to an accountant mutually acceptable to the Buyer and the Sellers (the “**Independent Accountant**”).

## The Independent Accountant will be instructed to resolve only those issues in dispute and render a written report on his or her resolution of disputed issues with respect to the Closing Balance Sheet and the resulting Adjustment Amount as promptly as practicable, but no later than 60 days after the date on which the Independent Accountant is engaged. The determination of the Independent Accountant will be based solely on written submissions of the Buyer, on the one hand, and the Seller on the other hand, and will not involve independent review. Any determination of the Closing Balance Sheet or Adjustment Amount by the Independent Accountant will not be outside the range established by the amounts in (1) the Closing Balance Sheet and the determination of the Adjustment Amount proposed by the Buyer, and (2) the Seller’s proposed adjustments thereto. The Independent Accountant’s determination will be final, binding, and conclusive on the parties as of the date of the determination notice sent by the Independent Accountant.

## The Seller and the Buyer will each bear one-half of the fees and costs of the Independent Accountant.

# **Seller Representations and Warranties.** The Seller represents and warrants to the Buyer that all of the representations and warranties set forth on Schedule 3 are true and correct in all respects as of the Effective Date.

# **Buyer Representations and Warranties.** The Buyer represents and warrants to the Seller that all of the representations and warranties set forth on Schedule 4 are true and correct in all respects as of the Effective Date.

# **Covenant Not to Compete; Nonsolicitation; Confidentiality.** As further consideration for the Purchase Price, the Seller agrees to abide by the noncompetition, nonsolicitation, and confidentiality obligations set forth on Schedule 5.

# **Indemnification**

## Following the Closing, the Seller shall indemnify the Buyer and the Buyer’s members against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, and Litigation Expenses, arising out of or relating to the Seller’s breach of any representation or promise contained in this Agreement. “**Litigation Expenses**” means any court filing fee, court cost, arbitration fee or cost, witness fee, and any other fee and cost of investigating and defending or asserting any claim for indemnification under this Agreement, including, without limitation, in each case, attorney fees, other professionals’ fees, and disbursements.

## Following the Closing, the Buyer shall indemnify the Seller against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, and Litigation Expenses, arising out of or relating to the Buyer’s operation of the Acquired Company after the Effective Time.

## Following the Closing, the remedies set forth in this section 6 are the parties’ sole remedy on any claim of any kind arising out of, resulting from, or connected with this Agreement or the transactions contemplated hereby, whether under a theory of negligence, breach of contract, breach of warranty, tort, or otherwise.

# **Limitation of Liability.** The liability of the Seller and the Buyer arising out of this Agreement or the transactions it contemplates will not exceed the Purchase Price.

# **Survival.** Except as otherwise provided in this Agreement, the representations and promises of the parties contained in this Agreement will survive (and not be affected in any respect by) the Effective Time for the applicable statute of limitations as well as any investigation conducted by any party and any information which any party may receive.

# **Further Actions.** At any time and from time to time after the Effective Date: (1) the Seller shall execute and deliver or cause to be executed and delivered to the Buyer such other instruments and take such other action, all as the Buyer may reasonably request, in order to carry out the intent and purpose of this Agreement; and (2) the Buyer shall execute and deliver or cause to be executed and delivered to the Seller such other instruments and take such other action, all as the Seller may reasonably request, in order to carry out the intent and purpose of this Agreement.

# **Training.** The Seller shall provide up to \_\_\_ hours of training to the Buyer in all aspects of the Acquired Company, during mutually agreeable times, over the first \_\_\_\_\_ weeks after closing, at no additional compensation.

# **Governing Law; Venue.** This Agreement and the transactions it contemplates will be construed in accordance with and governed by the internal laws (without reference to choice or conflict of laws principles) of the State of [\_\_\_\_\_]. Any suit, action, or other proceeding brought against any of the parties to this Agreement or any dispute arising out of this Agreement or the transactions it contemplates must be brought only in the state courts sitting in [\_\_\_\_\_] County, [\_\_\_\_\_], or the United States District Court for the [\_\_\_\_\_] District. By his, her, or its execution and delivery of this Agreement, each party accepts the jurisdiction of such courts and waives any objections based on personal jurisdiction or venue.

# **Assignment.** No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of each other party, except that the Buyer may assign any or all of the Buyer’s rights under this Agreement, in whole or in part, without obtaining the consent or approval of any other party or of any other person, (1) to any current or future affiliate of the Buyer, (2) to any entity into which the Buyer may be merged or consolidated, (3) in connection with any acquisition, restructuring, merger, conversion, or consolidation to which the Buyer may be a party, or (4) to a lender to the Buyer or its affiliates as collateral security for current or future obligations owed by the Buyer or its affiliates to the lender.

# **Notices.** All notices and other communications hereunder will be in writing and given by first class mail, return receipt requested, nationally recognized overnight delivery service, such as Federal Express, or personal delivery against receipt to the party to whom it is given, in each case, at the party’s address set forth in this section 13 or such other address as the party may hereafter specify by notice to the other parties given in accordance herewith. Any such notice or other communication will be deemed to have been given as of the date the applicable delivery receipt for such communication is executed as received or in the case of mail, three days after it is mailed.

If to the Seller: [\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

With a copy to (which does [\_\_\_\_\_]

not constitute notice): [\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

If to the Buyer [\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

With a copy to (which does [\_\_\_\_\_]

not constitute notice): [\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

# **Miscellaneous.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and all prior negotiations, writings, and understandings relating to the subject matter of this Agreement are merged in and are superseded and canceled by, this Agreement. This Agreement may not be modified or amended except by a writing signed by the parties. This Agreement is not intended to confer upon any person or entity not a party (or their successors and assigns permitted hereby) any rights or remedies hereunder. This Agreement may be signed in any number of counterparts, each of which will be an original with the same effect as if the signatures were upon the same instrument, and it may be signed electronically. The captions in this Agreement are included for convenience of reference only and will be ignored in the construction or interpretation hereof. If any date provided for in this Agreement falls on a day which is not a business day, the date provided for will be deemed to refer to the next business day. Time is of the essence with respect to all time periods and dates set forth in this Agreement. Any provision in this Agreement that is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction will be ineffective only to the extent of such invalidity, illegality, or unenforceability without affecting in any way the remaining provisions hereof; provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. The exhibits and schedules to this Agreement are a material part of this Agreement and are incorporated by reference herein.

*[Signature page follows.]*

The parties are signing this stock purchase agreement as of the Effective Date.

[BUYER]

By:

[NAME]

[TITLE]

[NAME]

Schedule 2

Contingent Purchase Price

Schedule 3

Seller Representations and Warranties

1. **Organization.** The Acquired Company is a duly organized and validly existing limited liability company in good standing under the laws of the state of [\_\_\_\_\_], and has the power and authority to own, lease, and operate its assets and properties and to conduct its business as now being conducted. The Acquired Company is licensed and qualified to do business as a foreign limited liability company and is in good standing in each jurisdiction where the operation of its business or the ownership of its properties requires such license or qualification.

2. **Authorization.** There is no provision in the Acquired Company’s articles of organization or operating agreement which prohibits or limits the Seller’s ability to consummate the transactions contemplated by this Agreement. The Seller has the full right, power, and authority to enter into this Agreement and to consummate or cause to be consummated all of the transactions contemplated by this Agreement and to fulfill all of the obligations contemplated to be consummated or fulfilled by the Seller hereunder. This Agreement constitutes a legal, valid, and binding agreement of the Seller enforceable against the Seller in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, and similar Laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

3. **No Conflict or Violation.** Neither the signing and delivery of this Agreement by the Seller, nor the consummation by the Seller of the transactions contemplated by this Agreement, nor compliance by the Seller with any of the provisions hereof will result in a breach of, or right of termination, forfeiture, or default under any term, condition, or provision of any of the Acquired Company’s contractual commitments or any permit or license required to operate the Acquired Company or a violation of any law or regulation or an event which, with the giving of notice, lapse of time or both, would result in any such violation.

4. **Capitalization.** The only equity owner of the Acquired Company is the Seller, the Purchased Interest represents all of the equity of the Acquired Company, and no person has any existing right to purchase any equity of the Acquired Company.

5. **Consents.** The Acquired Company is not required to obtain the consent of any party to a contract or any governmental entity in connection with the execution, delivery, or performance by the Seller of this Agreement or the consummation of the transactions it contemplates, except for the following (the “**Required Consents**”):

## [\_\_\_\_\_];

## [\_\_\_\_\_]; and

## [\_\_\_\_\_].

6. **Trade Name.** To the Seller’s knowledge, the Acquired Company’s use of the trade name [\_\_\_\_\_] in accordance with the Acquired Company’s past practices does not infringe the intellectual property rights of any third party.

7. **Compliance with Laws.** With respect to the operation of the Acquired Company by the Seller before the Effective Time, the Acquired Company and its employees and officers are and at all times have been in compliance in all material respects with each law applicable to the Acquired Company or to the operation of the Acquired Company’s business.

8. **Taxes.** The Acquired Company has filed all tax returns that are required to be filed and has paid all taxes that have become due under the tax returns or under any assessment that has become payable. All monies required to be withheld by the Acquired Company from employees for income taxes and social security and other payroll taxes have been collected or withheld and either paid to the respective governmental bodies or set aside in accounts for such purpose.

9. **Litigation.** There are no claims or suits pending or, to the Seller’s knowledge, threatened by or against the Seller or the Acquired Company (1) relating to or affecting the Purchased Interest or the Acquired Company (2) by or against any employee of the Acquired Company relating to or affecting the Purchased Interest. There are no judgments, decrees, orders, writs, injunctions, rulings, decisions, or awards of any court or governmental body to which the Acquired Company is a party or is subject with respect to any of the Assets, the Purchased Interest, or the Acquired Company is subject.

10. **Financial Information; Ordinary Course.** The Sellers have delivered to the Buyer: (1) the balance sheet of the Acquired Company as at December 31 in each of the years \_\_\_\_ through \_\_\_\_, and the related statements of income, changes in members’ equity, and cash flow for each of the fiscal years then ended; (2) a balance sheet of the Acquired Company as at the Most Recent Fiscal Year End (including the notes thereto, the “**Balance Sheet**”), and the related consolidated statements of income, changes in members’ equity, and cash flow for the fiscal year then ended; and (3) unaudited balance sheets as of and statements of income and cash flow (the “**Most Recent Financial Statements**”) for the Acquired Company for the \_\_\_\_\_ months ended \_\_\_\_\_ (the “**Most Recent Fiscal Month End**”). All such financial statements are accurate, correct, and complete, are in accordance with the books and records of the Acquired Company, and fairly present the financial condition and the results of operations, changes in members’ equity, and cash flow of the Acquired Company as at the respective dates of and for the periods referred to in such financial statements. The financial statements referred to in this section reflect the consistent application of accounting principles throughout the periods involved. The Acquired Company has operated its business in the ordinary course before the Effective Time.

11. **Accounts Receivable.** The accounts receivable as set forth on the Balance Sheet are (1) valid and genuine and have arisen solely out of bona fide sales and deliveries of goods, performance of services, and other business transactions in the Ordinary Course of Business, (2) not subject to valid defenses, setoffs or counterclaims, and (3) collectible within 90 days after billing at the full recorded amount thereof.

12. **Certain Business Relationships with the Seller.** Except in the Seller’s capacity as an employee, officer, and/or manager of the Acquired Company, neither the Seller nor any of the Seller’s affiliates has been a party to any business arrangement or relationship with the Acquired Company within the past 12 months, and neither the Seller nor any of the Seller’s affiliates owns any asset, tangible or intangible, that is used in the business of the Acquired Company. There are no amounts in excess of normal tax withholdings from wages owed by the Acquired Company to the Seller or any of the Acquired Company’s employees, and there are no amounts owed by the Seller or any of the Acquired Company’s employees to the Acquired Company.

13. **Sufficiency and Condition of Purchased Assets and the Purchased Interest.** At the Closing, the Seller shall convey to the Buyer good and marketable title to the Purchased Interest, free and clear of all liens and encumbrances. The Acquired Company’s assets (the “**Assets**”) are all of the assets required to operate the business of the Acquired Company in accordance with past practices. The Acquired Company has good and marketable title to all of the Assets free and clear of all liens and encumbrances. All equipment and signs are in working order and the premises will pass all inspections necessary to conduct the Acquired Company’s business after the Closing. Without limiting the foregoing, the Assets include, among other assets, all the assets set forth on Schedule 10. Since the Most Recent Fiscal Month End, the Acquired Company has not (1) removed cash from the Acquired Company other than in the ordinary course of business; (2) paid any bonus or other special compensation to any employee, contractor, or shareholder; or (3) declared or paid any dividend or other distribution.

14. **Contracts.** The following is a complete list of each material contractual obligation relating to the Acquired Company or the operation thereof (the “**Applicable Contracts**”):

[\_\_\_\_\_];

[\_\_\_\_\_]; and

[\_\_\_\_\_].

Each Applicable Contract has not been modified or amended except as disclosed on set forth above. Each such Applicable Contract is valid and enforceable against the Acquired Company in accordance with its terms and is in full force and effect and, to Sellers’ knowledge, each such Applicable Contract constitutes a legal, valid, and binding obligation of the other parties thereto, enforceable against them in accordance with its terms. The Seller has delivered or caused to be delivered to the Buyer complete copies of each Applicable Contract (including all amendments thereto). No material default by the Acquired Company has occurred under any such Applicable Contract or will occur as a result of the transactions contemplated hereby. There are no setoffs, counterclaims, or disputes existing or asserted with respect to any such Applicable Contract. To the Seller’s knowledge, there are no controversies which are threatened or pending against any third party to any such Applicable Contract which has had or is reasonably likely to have a material adverse effect on (1) the Acquired Company’s business, performance, results of operation, or properties; or (2) the value of the Purchased Interest.

15. **Environmental.** There has been no treatment, storage, disposal, or release of any Hazardous Substance at, from, into, on, or under the Acquired Company’s facilities. No Hazardous Substances are present in, on, about, or migrating from any such facility that could be expected to give rise to an environmental action against the Seller. “Hazardous Substances” means all explosive materials, radioactive materials, hazardous materials, toxic materials, petroleum, asbestos and materials containing materials, and all other materials, chemicals, and substances that are regulated by, form the basis of liability or are defined as hazardous, extremely hazardous, toxic, or words of similar import, under any applicable environmental law, including materials listed in 49 C.F.R. section 172.101 and materials defined as hazardous substances pursuant to section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act.

16. **Liabilities.** The Acquired Company has no Liabilities except: (1) liabilities which are set forth in the financial information referred to in section 10 of Schedule 3; or (2) attached as Attachment \_\_\_.

17. **Insurance.** Below is a list all insurance coverage carried by the Acquired Company. Each such policy is in full force and effect. All insurable Assets are insured for the benefit of the Acquired Company in amounts and against risks appropriate with respect to the Acquired Company’s operations and consistent with industry practice. The Acquired Company has not received any notice from any insurance company of any defect or inadequacies in the insurable Assets or any part thereof adversely affecting the insurability thereof, nor, to the Sellers’ knowledge, is there a valid basis for any such notice. No insurance carrier has made a reservation of right with respect to any claim made by the Sellers or the Acquired Company under any such insurance policy. The Acquired Company’s insurance coverage will be sufficient to cover all liability claims relating to the operation of the business of the Acquired Company before the Closing, whether in the form of an existing occurrence basis policy or through the procurement of sufficient tail insurance coverage for any existing claims made policy.

Insurance policies:

[\_\_\_\_\_];

[\_\_\_\_\_]

18. **Brokers.** Except for [\_\_\_\_\_], for which the Seller is solely responsible, no agent, broker, or other person acting under express or implied authority of the Seller is entitled to a commission or finder’s fee in connection with the transactions contemplated by this Agreement or, under express or implied authority of the Seller, will be entitled to make any claim (including the assertion of a lien) against the Buyer for a commission or finder’s fee.

Schedule 4

Buyer Representations and Warranties

1. **Organization.** The Buyer is a duly organized and validly existing [corporation/limited liability company] in good standing under the laws of the state of [\_\_\_\_\_], and has the power and authority to own, lease, and operate its assets and properties and to conduct its business as now being conducted. The Buyer is licensed and qualified to do business as a foreign [corporation/limited liability company] and is in good standing in each jurisdiction where the operation of its business or the ownership of its properties requires such license or qualification.

2. **Authorization.** There is no provision in the Buyer’s [articles of incorporation or bylaws/operating agreement] which prohibits or limits the Buyer’s ability to consummate the transactions contemplated by this Agreement. The Buyer has the full right, power, and authority to enter into this Agreement and to consummate or cause to be consummated all of the transactions contemplated by this Agreement and to fulfill all of the obligations contemplated to be consummated or fulfilled by the Buyer hereunder. This Agreement constitutes a legal, valid, and binding agreement of the Buyer enforceable against the Buyer in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, and similar Laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

3. **Brokers.** No agent, broker, or other person acting under express or implied authority of the Buyer is entitled to a commission or finder’s fee in connection with the transactions contemplated by this Agreement or, under express or implied authority of the Buyer, will be entitled to make any claim (including the assertion of a lien) against the Seller for a commission or finder’s fee.

Schedule 5

Restrictive Covenants

1. The Seller covenants and agrees that the Seller will not: (1) for a period of \_\_\_ years following the Effective Time own, manage, or be employed by (whether as an employee or independent contractor) a Competing Business within \_\_\_ miles of the Acquired Company; (2) for a period of \_\_\_ years following the Effective Date recruit or employ (whether as an employee or independent contractor) any of the Acquired Company’s current employees or independent contractors; or (3) for a period of \_\_\_ years following the Effective Date solicit customers of the Acquired Company. For purposes of this schedule, “**Competing Business**” means \_\_\_\_\_.

2. The Seller shall hold the Confidential Information in confidence and shall not use the Confidential Information for any purpose other than in furtherance of the Buyer’s operation of the Business without the Buyer’s express written consent. The Seller recognizes that Confidential Information involves one of the Buyer’s valuable and unique assets. “**Confidential Information**” means information directly or indirectly involving the Acquired Company that is not available or open to the public generally. The obligations in this paragraph will survive indefinitely.

3. The Seller has carefully read and considered the provisions of this Schedule 5 and, having done so, agrees that the restrictions set forth herein are fair and reasonable given the terms and conditions of this Agreement, the nature of the Acquired Company’s business, the area in which the Acquired Company markets its products and services, and the consideration being provided pursuant to this Agreement. In addition, the Seller specifically agrees that the length, scope, and definitions used in the covenant not to compete and other restrictions set forth in this Schedule 6 are fair and reasonable.

4. The Seller acknowledges and agrees that its breach of any of the agreements in this Schedule 5 would result in irreparable damage and continuing injury to the Buyer. Therefore, in the event of any breach or threatened breach of such agreements, the Seller agrees that the Buyer will be entitled to an injunction from any court of competent jurisdiction enjoining such person or entity from committing any violation or threatened violation of those agreements.

Schedule 10

Assets