



## BUY-SIDE REPRESENTATION AGREEMENT

Sage Capital LLC, a Missouri limited liability company (“Buyer”) hereby agrees as of the date hereof to engage \_\_\_\_\_ (“Advisor”) with respect to a potential investment on the terms set forth in this agreement (the “Agreement”).

### 1. Scope of Agreement.

(a) Advisor has a relationship with the company described in Section 1(c) (“Acquisition Candidate”) and proposes to facilitate discussions with respect to the possible sale of all or a portion of Acquisition Candidate’s assets or equity interests (a “Transaction”) to Buyer or an entity owned, controlled or managed by Buyer. Advisor agrees to perform the services set forth herein on the following basis (*check applicable box*):

- Advisor will represent Buyer on an exclusive basis and will not assist or perform similar services for other prospective purchasers of Acquisition Candidate’s assets or equity during the term of this Agreement (an “Exclusive Engagement”); or
- Advisor may contact, assist or perform similar services for other prospective purchasers of Acquisition Candidate’s assets or equity interests, and may seek or obtain compensation from such other purchasers, in conflict with its representation of Buyer.

(b) As a condition to this Agreement, Advisor hereby confirms that, to the best of Advisor’s knowledge after reasonable inquiry, Acquisition Candidate is not already in discussions with Buyer and neither has engaged nor is planning to engage any financial advisor to assist with a potential Transaction (any such advisor, a “Sell-Side Agent”) who is both known to Buyer and reasonably likely to contact Buyer regardless of any assistance from Advisor.

(c) The Acquisition Candidate is (*insert general description of industry and type of business*):

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

### 2. Advisor’s Services.

(a) Advisor will arrange an introductory meeting or teleconference between Buyer and a Senior Representative of Acquisition Candidate to discuss a Transaction within 45 days of the date hereof (an “Introduction”). “Senior Representative” means the chief executive officer, chief operating officer, president or majority owner of Acquisition Candidate, or a duly authorized Sell-Side Agent.

- (b) Advisor will be under no obligation to, and will not, perform any additional services on behalf of Buyer other than as set forth explicitly hereunder, unless mutually agreed by Buyer and Advisor.

### 3. Fees.

- (a) In return for its services set forth in Section 2, Advisor will be entitled to a fee (the “Success Fee”) upon consummation of a Transaction with Buyer or an entity owned, controlled or managed by Buyer during the term of this Agreement or, unless this Agreement is terminated at Advisor’s election, during the Post-Termination Period. Advisor will receive no fee if a Transaction is not consummated or if this Agreement is terminated by Advisor prior to consummation.
- (b) The Success Fee will be determined based upon Acquisition Candidate’s Enterprise Value in accordance with the following table, increased by the amounts provided in Section 3(c) and reduced by the amounts provided in Section 3(d):

Enterprise Value (defined below)	Contingent Fee		
	Base Amount	Plus:	of Enterprise Value in Excess of:
Up to \$2,000,000	\$ 0	5.0%	\$ 0.
\$2 MM to \$4 MM	\$ 100,000	4.0%	\$ 2,000,000.
\$4 MM to \$6 MM	\$ 180,000	3.0%	\$ 4,000,000.
\$6 MM to \$8 MM	\$ 240,000	2.0%	\$ 6,000,000.
\$8 MM to \$40 MM	\$ 280,000	1.0%	\$ 8,000,000.
Above \$40,000,000	\$ 600,000	0.5%	\$ 40,000,000.

- (c) If this Agreement involves an Exclusive Engagement and the Transaction is consummated without the involvement of any Sell-Side Agent, the percentages and Base Amounts set forth in Section 3(b) will be multiplied by a factor of 1.5 (150%). For example, in a Transaction with an Enterprise Value of \$30,000,000, the Success Fee calculated in this Section 3(c) would be \$750,000.
- (d) The Success Fee calculated pursuant to Sections 3(b) and (c) above will be reduced by any fees payable to any Sell-Side Agent(s) in connection with a Transaction; provided that (i) if an Established Relationship does not exist, the Success Fee will not be less than one-half (50%) of the Success Fee otherwise calculated in the table set forth above in Sections 3(b), and (ii) if an Established Relationship exists, the Success Fee will not be less than \$75,000.
- (e) “Post-Termination Period” means a period of eighteen months commencing on the date of termination of this Agreement.
- (f) “Enterprise Value” means:
- (i) In any Transaction resulting in a Change of Control, the sum of (i) the cash consideration paid by Buyer or its Affiliates in the Transaction, (ii) the fair market value of any equity or debt securities of the surviving entity in the Transaction that are retained by Acquisition Candidate or its owners, (iii) the cash proceeds of any equity

or debt securities or loans issued by the surviving entity in the Transaction to any third party to finance the Transaction, (iv) the principal amount of any indebtedness of Acquisition Candidate that is assumed by the surviving entity in the Transaction and that remains outstanding immediately after completion of the Transaction, and (v) without duplication, any contingent consideration payable to Acquisition Candidate or its owners whose payment is subject to conditions subsequent to closing of the Transaction (“Contingent Consideration”); or

- (ii) In any Transaction not resulting in a Change of Control, the amount calculated in Sections 3(b), (c) and (d) above multiplied by Buyer’s and its Affiliates’ fully-diluted ownership percentage of the surviving entity in the Transaction.
- (g) A “Change of Control” occurs when, as a result of a Transaction, Buyer together with any of its Affiliates acquires, directly or indirectly, more than 50% of the assets or equity securities of Acquisition Candidate.
  - (h) “Affiliate” means, with respect to any party, such party’s owners or any entity owned, controlled or managed by such party.
  - (i) An “Established Relationship” means a relationship between Buyer and Acquisition Candidate or any Sell-Side Agent engaged within 90 days of the date hereof, where the existence of such relationship is supported by evidence provided to Advisor within 10 days of the disclosure to Buyer of the identity of such party.
  - (j) For purposes of determining the Success Fee, the fair market value of any equity or debt securities retained by Acquisition Candidate or its owners will be determined (i) if such securities are of the same class as securities acquired for cash by Buyer, its Affiliates or any third party in the Transaction, the price per unit paid by such party, or otherwise (ii) by mutual agreement of Advisor and Buyer acting in good faith.
  - (k) The Success Fee will be payable in cash at closing of the Transaction, provided that if any portion of the Enterprise Value consists of Contingent Consideration, the corresponding portion of the Success Fee will be payable only when, as and if such Contingent Consideration is actually paid. Until such Contingent Consideration is finally determined, Buyer will furnish all such financial and other information as Advisor may reasonably request to verify the existence and amount of such Contingent Consideration.
  - (l) For purposes of calculating the Success Fee, any series of related transactions shall be treated as a single Transaction.

#### 4. Confidentiality.

- (a) In connection with this engagement, Advisor may disclose to Buyer certain confidential information about Acquisition Candidate which Advisor has obtained from such Acquisition Candidate or its owners, advisors or representatives (“Representatives”), including without limitation financial information, projections, business descriptions or plans, sales and customer information, contracts, trade secrets, intellectual property, personnel information and other similar information, whether given orally, in writing or in electronic or other form (“Confidential Information”). For this purpose “Confidential Information” also includes any information about the Transaction, including the fact that Acquisition Candidate is holding discussions about a possible Transaction, and any materials or analyses prepared by Buyer, Advisor or their Representatives that contain or are based upon Confidential Information. Notwithstanding the foregoing, the term “Confidential Information” shall not include information that (i) is or becomes generally available to the public, other than as a result of a breach of any agreement by Buyer or its Representatives, (ii) was or becomes available to Buyer from a source other than Acquisition Candidate or Advisor, provided that such source is not bound by a confidentiality agreement with Acquisition Candidate, Advisor or their Representatives with respect to such information, or (iii) is independently developed by Buyer or its Representatives (other than Advisor) without use of any Confidential Information.
- (b) Buyer agrees to hold any such Confidential Information to the same care given to its own confidential information, and shall use such Confidential Information only in connection with its consideration of a Transaction. Buyer shall not disclose, without prior written consent of Advisor or Acquisition Candidate, any Confidential Information to any person or entity, other than to its Affiliates and Representatives who have a need to know such Confidential Information in furtherance of the Transaction. Buyer may, however, disclose Confidential Information to the extent required by law pursuant to any regulatory or government order, provided that Buyer will promptly notify Acquisition Candidate of the same in order to enable Acquisition Candidate to seek a protective order or otherwise limit such disclosure. Buyer shall promptly return or cause to be destroyed any such Confidential Information in its possession upon receipt of a written request by Acquisition Candidate.
- (c) Advisor agrees not to disclose to Buyer or its Representatives any Confidential Information which it is under any legal duty not to disclose.
- (d) Nothing in this Agreement shall create any right on the part of Buyer with respect to the Confidential Information, except to the extent specifically provided otherwise herein.
- (e) Advisor shall owe no duty hereunder to Buyer not to disclose Confidential Information to any other prospective purchaser of Acquisition Candidate, unless either this Agreement involves an Exclusive Engagement or such disclosure would constitute a breach of an obligation owed by Buyer to Acquisition Candidate. Notwithstanding the foregoing, Advisor shall not disclose to any other party the fact that discussions are taking place between Buyer and Acquisition Candidate or the proposed terms of any Transaction between them.
- (f) If requested by Acquisition Candidate, Buyer and Advisor shall each execute a separate confidentiality agreement directly with Acquisition Candidate with respect to the Confidential Information that is consistent with this Agreement and contains usual and customary terms.

- (g) The respective confidentiality obligations of Buyer and Advisor pursuant to this Section 4 shall survive for a period of two years following termination of this Agreement.
5. **Advisor's Representations.** Advisor represents, as a condition to this Agreement including payment of any Success Fee hereunder, that: (i) neither execution of this Agreement nor the performance of any services hereunder violates any other agreement to which Advisor is a party or constitutes a breach of any obligation which Advisor owes to any other party; and (ii) to the best of Advisor's knowledge after reasonable inquiry, neither Acquisition Candidate nor its Sell-Side Agent(s) has an Established Relationship with Buyer.
  6. **Reliance.** Buyer acknowledges that Advisor has not independently verified any information received by Advisor with respect to Acquisition Candidate. Advisor makes no representation or warranty as to the accuracy or completeness of any such information, and Buyer is responsible for determining to its own satisfaction the accuracy or completeness thereof. Buyer agrees to hold Advisor harmless against all losses, claims, damages or liabilities arising out of the inaccuracy or incompleteness of any such information.
  7. **Indemnification.** Buyer agrees to indemnify Advisor and hold Advisor harmless against and from all losses, claims, damages or liabilities arising out of Advisor's services rendered on behalf of Buyer pursuant to this Agreement, and to reimburse Advisor for all reasonable legal and other out-of-pocket expenses incurred by Advisor in connection with defending any action, claim, proceeding or investigation in respect thereof, except to the extent that any such loss, claim, damage or liability results from the negligence or willful misconduct of Advisor or from Advisor's breach of this Agreement or any other agreement to which Advisor is a party.
  8. **Term.** This Agreement will continue in effect for a period of one year from the date hereof, unless earlier terminated at the election of Buyer or Advisor at any time by written notice to the other party. Upon termination, the parties shall have no further obligations hereunder, except for Buyer's obligation to pay Advisor's Success Fee pursuant to Section 3, the respective confidentiality obligations of the parties set forth in Section 4, the reliance provisions set forth in Section 6, the indemnity provisions set forth in Section 7, and the dispute resolution provisions set forth in Section 9, all of which shall survive.
  9. **Disputes.** This Agreement shall be governed by the laws of the state of Delaware. Any dispute or controversy arising out of this Agreement shall be determined by arbitration conducted in accordance with the rules of the American Arbitration Association then in effect. Any arbitration award shall be final and binding upon Advisor and Buyer, and judgment upon the award may be entered in any court having jurisdiction.
  10. **Entire Agreement.** This Agreement constitutes the entire understanding of Advisor and Buyer with respect to the Transaction and Acquisition Candidate, supersedes any prior oral or written understanding between the parties and may not be amended except in a written instrument signed by both parties. If any provision of this Agreement is found to be unenforceable, that provision shall be severed and the remainder of this Agreement shall continue in full force and effect. This Agreement shall become effective and binding only upon timely execution by both parties.

Agreed and accepted by:

*(Insert name of Advisor)*

SAGE CAPITAL LLC

By:

---

By:

---

Name:

Name:

Title:

Title:

Date:

Date: