

## BEING ACQUIRED

### BROKER LISTING AGREEMENT—SALE OF BUSINESS

THIS LISTING AGREEMENT is made and entered between  
Demo Company (the “Company”) and  
\_\_\_\_\_ (the “Broker”).

In consideration of the mutual benefits and obligations of the parties set forth in this Agreement, the Company hereby retains the Broker to use its best efforts to solicit offers for the purchase of substantially all of the asset or all of the stock if the Company, subject to the following terms and conditions:

#### ARTICLE I OBLIGATIONS OF BROKER

Broker shall use its best efforts to find a buyer for substantially all of the assets or stock of the Company. Broker shall (1) include the Company with other listings maintained by Broker; (2) place a suitable sign on the premises; (3) promptly notify the Company of prospective buyers; and (4) show the Company’s premises and operations to prospective buyers.

#### ARTICLE II BROKER’S COMMISSION

2.1 Commission. Broker shall receive a commission of 3% of the selling price of substantially all of the assets or stock of the Company if: (1) Broker procures a buyer who is ready, willing, and able to purchase substantially all of the assets or stock of the Company on terms deemed acceptable by the Company in its sole and absolute discretion; and (2) substantially all of the assets or stock of the Company are sold to a buyer procured by the Broker during the term of this listing or if, within 6 months after the termination of this listing, substantially all of the assets or stock of the Company are sold to a buyer who was first submitted to the Company by the Broker.

2.2 Expenses. The Company and the Broker shall each pay their own respective expenses involved in performance of their respective duties under this Agreement.

#### ARTICLE III TYPE OF LISTING

This listing is and shall be an exclusive listing from the date first set forth above through Demo, \_\_\_\_\_, and the Broker’s right to a commission will arise from a sale of substantially all of the assets or stock of the Company to a buyer who is procured by the Broker, but shall not accrue if the buyer is procured by the Company itself.

#### ARTICLE IV CONFIDENTIALITY

5.1 Confidentiality Obligations. During the term of this Agreement and for a period of ten (10) years thereafter, Broker shall maintain in confidence and use only for purposes of this Agreement any information or documentation which Seller marks “Confidential” (collectively “Confidential Information”). To the extent it is reasonably necessary or appropriate to fulfill its obligations or exercise its rights under this Agreement, Broker may disclose Confidential

Information which it is otherwise obligated under this Article not to disclose to its affiliates and to prospective buyers, on a need-to-know basis, on condition that such entities or persons agree to keep the Confidential Information confidential for the same time periods and to the same extent as Broker is required to keep the Confidential Information confidential.

5.2 Limitations on Usage. Except as expressly authorized by this Agreement or by other prior written consent of the Company, for the term of this Agreement and for ten (10) years thereafter, Broker shall not deliver, transmit, or provide to any person other than as permitted under this Agreement, and shall not use any of the Confidential Information, or authorize, cause, or aid anyone else to do so. Except as permitted in this Agreement, nothing shall be deemed to give Broker any right or license to use or to replicate or reproduce any of the Confidential Information, or to authorize, aid, or cause others so to do.

5.3 Survival. The covenants set forth in this Article V shall survive the termination of this Agreement and continue in full force and effect for ten (10) years without limitation.

## **ARTICLE V GENERAL PROVISIONS**

6.1 Binding Effect; Benefits. This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the parties hereto and their respective heirs, successors, and assigns. Except as otherwise set forth herein, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective heirs, successors, and assigns any rights, remedies, obligations, or other liabilities under or by reason of this Agreement.

6.2 Governing Law. This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of California.

6.3 Severability. If any term, covenant, condition, or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable to any extent, the remaining terms, conditions, and provisions of this Agreement shall not be affected thereby and each remaining term, covenant, condition, and provisions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law. If any provision of this Agreement is so broad as to be unenforceable, such provisions shall be interpreted to be only as broad as is enforceable.

6.4 Entire Agreement. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party to this Agreement except to the extent incorporated in this Agreement.

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

Demo User \_\_\_\_\_ (the "Company")                      \_\_\_\_\_ (the "Broker")

By: Demo User \_\_\_\_\_

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