

NON-BINDING SUMMARY OF TERMS

[MONTH, DAY YEAR]

The following is a summary of proposed terms of the acquisition of all or substantially all of the assets (the "Assets") of [ENTER NAME OF SELLING FIRM] by [ENTER NAME OF BUYING FIRM], a [ENTER STATE] [ENTER ENTITY TYPE]. Except as set forth in Part II, which shall be binding on all parties upon the acceptance of this summary of terms by the parties, this summary of terms is not intended to be a binding agreement between the parties. Each of the parties agrees that unless and until a definitive agreement for the matters contemplated by this Non-Binding Summary of Terms is executed and delivered, no party, nor any of its respective affiliates, is under any obligation, express or implied, to propose or complete any such transaction or to negotiate in good faith toward a binding contract. [ENTER NAME OF BUYING FIRM] may at any time and for any or no reason determine not to proceed with further consideration of any such transaction subject to the Exclusivity provisions below.

1. NON-BINDING SUMMARY OF TERMS OF PROPOSED ACQUISITION OF ASSETS:

The acquisition will be structured as the purchase of the Assets of [ENTER NAME OF SELLING FIRM] (here in referenced as SELLER) by [ENTER NAME OF BUYING FIRM] (here in referenced as BUYER).

a. **Purchase Price; Payment of Purchase Price:** The consideration payable to BUYER for the Assets to be Sold and Purchased.

- i. Seller agrees to sell, transfer and deliver to Buyer and Buyer shall purchase and accept from Seller, the following assets, properties and right of Seller (the "Assets") as the same exist as of the Closing Date.
- ii. All of Seller's right, title and interest to the Assets, which are the rights to service and receive fees from the Client Accounts associated with the financial advisory business of [ENTER BUSINESS NAME].
- iii. All of Seller's client lists and client contracts. Copies of all books, records, ledgers, reports, plans, and files related to the conduct of the Business as it relates to the servicing of the Assets in paper, electronic or other forms that are maintained by Seller.
- iv. All of Sellers' right, title and interest in and to any trademarks, service marks, trade names, logos, and corporate names used by seller regarding the Business.
- v. Tangible property (including but not limited to, computers, office equipment and furnishings) used by Sellers for operating the Business excluding the commercial building that the Business is located in.
- vi. All good will related to the Assets.
- vii. Assignment of all of Seller's business telephone numbers, websites and other business associated intellectual property.

b. **Excluded Assets:** The Seller shall retain the following assets which are excluded from this sale ("Excluded Assets").

- i. All of Seller's Business bank accounts and cash on hand,
- ii. All of Seller's prepaid fees and deposits for utility services, insurance, licenses and other such fees and deposits, including the lease security deposit,

- iii. All pre-paid deposits and membership payments received from clients of the Business, (d) all fees earned up to the closing date, but not yet received. (e) The Seller's commercial property where the business resides.
- iv. Identification of Clients to be Transferred. It is material to this agreement that:
- v. Seller will provide a complete inventory of the Assets to be transferred which represents one-hundred percent (100%) of the revenue of the Business and one-hundred percent (100%) of assets managed by the Business.

2. **Purchase Price and Payment Schedule:** The total Purchase Price is [ENTER PURCHASE PRICE].

- a. **Down Payment.** At closing, Buyer shall pay, via wire or certified check, [ENTER DOWN PAYMENT] to Seller. The Buyer shall execute a promissory note evidencing the remaining amount owed which will be revised subject to the Contingent Payment Schedule set forth below.
- b. **Contingent Payment Schedule:** Beyond the initial Down Payment, [ENTER SELLER FINANCING TERMS] EXAMPLE Buyer agrees to make 60 equal monthly payments of [ENTER MONTHLY PAYMENT AMOUNT] of the Purchase Price assuming the following conditions are met: If on the first anniversary date of the Closing Date the Seller has successfully transferred a minimum of 90% of the Business's revenue to the Buyer.
- c. **Look Back Provision:** If less than 90% of Seller's revenue is transferred to Buyer one year from the Closing Date, then the all remaining payments shall be reduced by the percentage of the revenue below 100%.
- d. **Tax Treatment of Payments:** The payment of any portion of the Purchase Price, to the extent paid, shall be allocated for tax purposes in the following order and in the following amounts.
 - i. The value placed on the non-compete and non-solicit will be [ENTER NON-COMPETE PERCENTAGE] % of the Purchase Price.
 - ii. Consulting Payment will be [ENTER CONSULTING PERCENTAGE] % of the Purchase Price.
 - iii. All Assets, including client accounts and related goodwill will be [ENTER GOODWILL PERCENTAGE] % of the Purchase Price.
 - iv. The Parties agree that the allocation described in this section represents Seller's and Buyer's mutual agreement with respect to the allocation of the deemed sales price of the Assets as required pursuant to Section 1060 of the Internal Revenue Code and regulations promulgated thereunder among such Assets (the "Section 1060 Allocation"). Buyer and Seller will report and file all tax returns consistent with the Section 1060 allocation and shall take no position contrary thereto or inconsistent therewith.
 - v. If any of the contingent purchase price payment is not paid then the unpaid portion shall be reduced from the goodwill.

3. **Assets and Liabilities:** The Assets will be acquired by BUYER free and clear of any and all liens, pledges, security interests, charges, contingencies and claims and shall consist of all of the client relationships the SELLER currently holds (the "Contracts").

a. As of the drafting of this Agreement the total number of Contracts is _____ representing a total amount of \$ _____ being invested on behalf of SELLERS clients. SELLER, shall jointly and severally retain and indemnify and hold BUYER harmless from any liabilities or obligations of the business operated using the Assets (the "Business").

b. BUYER shall not assume any debts, obligations or liability of SELLER. BUYER's only liabilities or obligations arising after the Closing shall be solely for acts or omissions on the part of BUYER.

4. **Conditions:** The obligations of each of SELLER and BUYER to close the proposed transaction shall be subject to the satisfaction of customary conditions contained in transactions of this nature, including, but not limited to, the following, each of which shall constitute conditions precedent to the obligations of each party.

a. Preparation and execution of a definitive acquisition agreement and all necessary and related agreements (together, the "Definitive Agreements"), satisfactory in form and substance to both parties and their counsel. Such Definitive Agreements will contain, among other provisions, customary representations and warranties of BUYER with respect to the Business and the Assets and appropriate indemnities from SELLER (and any partners). The parties will endeavor to have said Definitive Agreements finalized and agreed to by both parties within ninety (90) days of the execution of this agreement.

b. Satisfactory completion of detailed due diligence wherein BUYER shall be provided access to SELLER's books, records, clients, and any all governmental, including without limitation the U.S. Securities and Exchange Commission notices, claims, charges, investigation, inquiries, or communication in any form. BUYER shall also be permitted to speak with SELLER's clients directly to determine the likelihood of them transitioning to the BUYER upon closing of the purchase agreement contemplated herein.

5. **Employees:** BUYER will contemplate, at its sole discretion, hiring (effective as of the Closing Date) all the employees of SELLER, but shall be under no obligation to hire such employees.

6. **Exclusivity:** Upon the parties' execution of this Non-Binding Summary of Terms, for a period of ninety (90) days thereafter, SELLER and its partners will negotiate solely with BUYER concerning the transactions described herein and not directly, or through an agent or third party acting directly or indirectly on behalf of SELLER or any or all of the partners, officers and affiliates of SELLER, solicit or negotiate any offers or indications of interest from any other party or parties or supply any non-public information with regard to SELLER, its Assets or its Business to any other party or parties or enter into any contract or agreement with any other party or parties

regarding any business combination or sale of an equity interest in SELLER or any sale or transfer of any substantial portion of the Assets or Business. Exclusivity may be terminated prior to the 90-day period solely by written notice to SELLER by BUYER.

7. BINDING PROVISIONS

- a. **Confidentiality:** The parties acknowledge and agree that the Mutual Confidentiality and Non-Disclosure Agreement dated [MONTH DAY, YEAR] executed by BUYER and SELLER continues to be in full force and effect and the term of such agreement will be extended for two years upon the execution of this Non-Binding Summary of Terms.
- b. **Expenses:** Each party will be solely responsible for and bear all costs and expenses (including any broker's fees, finder's fees, attorney's fees and fees of other representatives) incurred by it at any time in connection with evaluating, negotiating, pursuing or consummating the proposed acquisition.
- c. **Governing Law:** This Summary of Non-Binding Terms and any claim arising hereunder shall be governed by, construed, interpreted and enforced in accordance with the internal laws of the State of [ENTER STATE] without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of another jurisdiction.
- d. **Counterparts:** This Summary of Non-Binding Terms may be executed in one or more counterparts each of which shall be deemed an original and all of which when taken together shall constitute one in the same instrument. The Summary of Non-Binding Terms may be executed and delivered electronically.

This summary of non-binding terms shall expire unless signed and accepted by SELLER not later than [MONTH DAY, YEAR].

Date: [MONTH DAY, YEAR]

By: [ENTER FIRM NAME]

Name: [ENTER REPRESENTATIVES NAME(s)], [ENTER TITLE]

Signature:

Date: [MONTH DAY, YEAR]

By: [ENTER FIRM NAME]

Name: [ENTER REPRESENTATIVES NAME(s)], [ENTER TITLE]

Signature: