

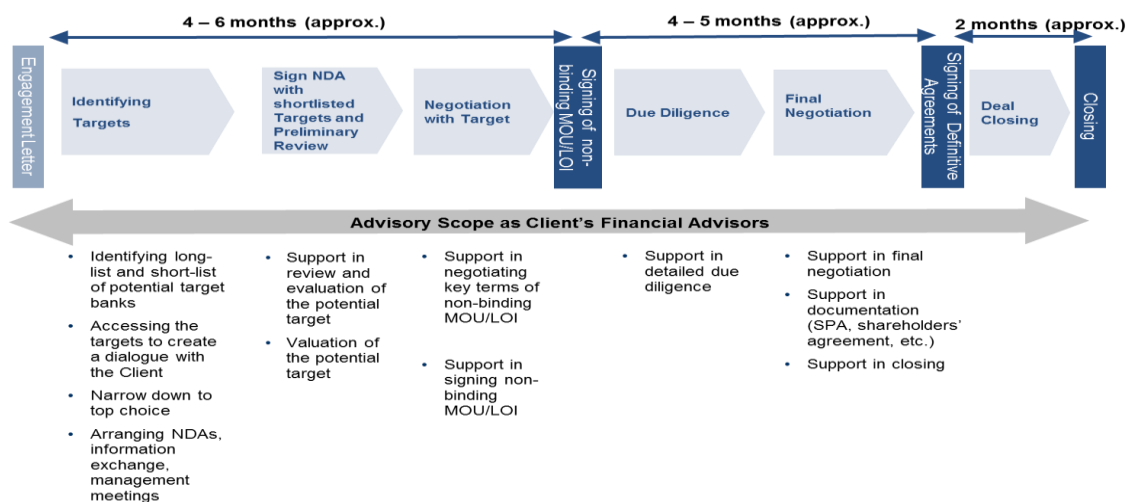
## 43<sup>rd</sup> BFSICM (BFSI & Capital Markets) Roundtable – Resource Paper and Presentation on Key Learnings in a Buy-side M&A Transaction

Date: 25<sup>th</sup> February 2017

Prepared by: CA Apurva Bipin Shah

The case study is provided in the enclosed presentation.

The indicative deal process flow and Timetable is as under:



The deal process commences with the Pre-mandate signing:

- Detailed pitch pack
- Our understanding of the Client
- Client requirements and acquisition criteria
  - Revenue size
  - Whether a listed or private company; PE backed
  - Geography preference – within India as well as global presence
  - Service Offerings / Verticals Present
  - Key management experience and background
  - Preference for minority / majority / path to majority
- Few target leads – either with name or without name
- Overall process and timelines
- Roll-out plan

Next is the Kick-off Phase:

- Group name and Group ID
- Working Group List
- Passwords
  - Internal files
  - External files
- Prepare a weekly status format file which contains the tasks for the week and next steps
- A timelines sheet which contains the broad project plan highlighting the Japanese as well as Indian holidays

- Timing Difference: There is time gap of 3 and half hours between India and Japan. So the time of the calls has to be carefully thought through and worked out. In case the Target has offices in other locations like USA / UK further planning will be required
- The Client might not be comfortable with the accent of Indians. It is advisable to speak slowly so that the Client is able to understand us better

### **The initial First Steps:**

- Preparing long list of Targets
  - Industry Association websites
  - Industry reports
  - Databases
- Shortlisting the Targets
  - Based on the acquisition criteria provided by the Client, further shortlist the Targets
- Analysis of the selected companies (Refer following para)
- Meeting the Target
  - The initial interactions are on an informal basis to understand the interest
  - An approach mail which is finalized at post mandate signing stage is sent to the Target
  - Follow-up with the Target for a call or meeting; initially with the Financial Advisor
- Detailed excel sheet
  - Company website
  - Promoter details
  - Promoter stake
  - Management background / reputation
  - Experience working with foreign partner / Joint Ventures
  - Services break-up
  - Verticals break-up
  - Geographies presence
  - Manufacturing set-up / Data centers, depending on the industry
  - Key Investors, if any
  - Revenue numbers
- Detailed financial information (P&L, BS) wherever available. Mainly available for listed entities in India
- Key Ratios and valuation metrics like EV / Revenue, EV / EBITDA
- Credit Ratings report from rating agencies like CARE, ICRA, Crisil, etc
- Company presentations / brochures available in public domain

### **Information Finalized Before Approaching the Target:**

- Before we hit the market with the opportunity, we keep the following data ready
  - Client presentation to be shared with the Targets

- Approval to share Client name
- Articulate the reasons for partnership with the Target
- Articulate the synergies which the Client brings on table for the Target
- Talking points with the Target
- Availability of Client for calls with Prospective Clients
- Detailed information checklist (information request from the Target)
- Prepare approach e-mails and get a sign-off from the Client
- NDA format with the Target; jurisdiction to be highlighted
- All of the above materials are kept ready in parallel to the First Steps

#### **Initial Interaction with the Target:**

- Along with the approach mail, the agenda for the call is discussed and articulated in consultation with the Client
- Share the approach mail and seek thoughts from the Target
- Follow-up with the Target for preliminary interest and / or call with financial advisor team
- Signing NDA with the Target
  - Some Clients are comfortable to share the name only once the Target is willing to sign NDA
  - This creates an additional challenge to convince the Target about the Japanese Company
  - This is an unusual process to approach without the Client name but we managed
- Challenges for signing NDA
  - Jurisdiction is always a challenge with signing NDA
  - The Client will prefer Japan. The Targets prefers their own jurisdiction. We normally suggest a neutral venue such as Singapore or UK for NDA
- Post each call or a meeting, a detailed minutes of the meeting are circulated in a password protected file
- All the key items discussed with the Target are shared with the Client
- The Client then takes a call to shortlist particular Targets and seek more information to understand them better

#### **Preliminary Review**

- Financial Advisor engages with the shortlisted Targets
- Set-up meeting with the Client and the Targets
- Check for requirement of Translator
- Engage with the Target for their inputs and feedback on the Client
- Initial inputs from the Client:
  - Once the management meetings are over, we have a meeting with the Client before they fly back to Japan
  - The meeting is to seek Financial Advisor views and inputs for their internal management discussions
  - The Japanese Clients expect us to provide clarifications post the management meeting to confirm their understanding about the Target

- This meeting is generally planned on the last day of their trip where the Client spends 4 – 5 hours with us. Japanese Clients prefer such meetings

### **Further Interactions**

- The Client will have internal discussions and build consensus with all team members
- Preliminary views from Client based on meetings and internal management discussions
- Seek information from the Target
- We also have to manage the expectations of Indian Target as Japanese transactions do take time
- There will be handholding required for the Client
  - Who they want to further shortlist
  - Rationales
  - Next steps
- Collate all the information about the Targets and prepare a preliminary assessment presentation pack
- Preliminary valuation exercise to be conducted by Financial Advisor
- Handhold the Client with any clarifications that may be required to understanding the Target – their products, regulations, taxation, legal status, financial numbers, FDI policy, etc. This is done in the form of an information pack with back-up sources
- Detailed discussion with the Client regarding the information pack prepared
- One more meeting / call to confirm progress
- Discuss next steps and agree some timelines
- Confirm interest from the Client which includes the Clients top choices and the priority in which they would like to approach
- Further engage with the Client for the overall transaction framework

### **Non – Binding Offer**

- In case the Client confirms interest in the Target, a preliminary non-binding offer is issued to the Target
- Further information is sought from the Target such as detailed financial projections, business plan, synergy expectations, to prepare the valuation of the Target
- A detailed valuation report is shared with the Client with our views and rationale for the valuation range
- Detailed calls / meeting with the Client to discuss the valuation report
- Before the preliminary non-binding offer is finalized, a draft format is shared with the Client and explained thoroughly
- We have discussions with the Client on how to negotiate the Non-Binding offer with the Target
- The preliminary non-binding offer might require Board approval from the Client Board; a management presentation is prepared
- Our general experience has been that the decision making at Japanese companies is relatively slow. They have to build an internal consensus amongst all the stake holders
- Once the Non-Binding Offer is submitted to the Target, a detailed negotiation takes place between the Client and the Target
- Financial Advisor assists the Client in each and every step during the negotiation and provides any additional data that might be required to substantiate a particular stand

- Once the Client and the Target agrees on the Non-Binding Offer and its terms and conditions, the Client will commence discussions related to due diligence
- Parallel to NBO discussions, prepare the Scope of the Due Diligence (DD)
- Suggest few advisors names to the Client and have preliminary Client meetings
- Engage with finance, tax, legal DD advisors to evaluate the Target

### **Due Diligence (DD)**

- It is decided in advance whether the Client and the Target are ok with Print version of DD or Virtual DD taking into consideration the overall cost, comfort, and preference of the Target and the Client
- Facilitate the entire DD. In case of physical DD, be present at the Target location
- Have daily / weekly calls with the DD advisors, send weekly report to the Client to keep them appraised of the progress; intervene in case there are any issues with the process
- Follow-up with the DD advisors for the final DD report
- Have calls with the DD advisors to understand the red flag points and the severity of these items
- Extensively analyze the DD findings to help the Client make an informed decision; bifurcate the red flag items into High, Medium and Low risk items
- Take positions to help with negotiations with the Target
- Prepare a presentation pack about the DD findings and its implications, if any on the valuation
- These DD findings are internally discussed by the Client with its Board and management team
- Based on the DD findings, to prepare a revised valuation range incorporating all the red flag events and share it with the Client
- Based on the new valuation, to advise the Client on the optimum transaction structure which could provide control to the Client at the earliest
- The structure to contain various levels of funding from the Client and the % stake to be acquired at each stage
- We create several different transaction structures to ensure majority was attained at the earliest
- To highlight the key challenges at each stage of the transaction – the transaction involved not only secondary sale, but primary sale, and it triggered mandatory open offer

### **Definitive Agreements**

- Detailed negotiations for the Client on the
  - valuation and share pricing
  - deal terms
  - deal structure
  - post-transaction roles and responsibilities
- On confirmation by the Target, to get into the Definitive Agreements
- Negotiation & finalization of
  - Shareholders' Agreement (SHA)
  - Share Subscription Agreement (SSA) ensuring interest of the Client and considering long-term benefits from the acquisition and management control

- Co-ordination with the Lawyers
- To ensure that the agreements are properly stamped as per the Indian regulations

#### **Pre-Deal Completion Formalities**

- There are certain things which are not part of the Scope but are coordinated to ensure smooth completion of the transaction
  - PAN
  - Bank account
  - Demat account
- To obtain competitive quotes from various vendors
- Filling up forms for the Client
- Preparation of draft of the Board resolution required as per the Indian regulations
- Liaise with the Bank for completion of the documents

#### **Transaction Completion**

- Example of post completion formalities
  - FC-TRS valuation
  - Filing of FC-TRS valuation with Bank
  - Open Offer services
  - Opening of Escrow accounts
  - Funding of Escrow accounts
  - Negotiating for the best rates for the foreign exchange remittances
  - Ensuring that the shares are credited in the account of the Client
  - Opening of Escrow accounts
  - Outward foreign exchange remittances

#### **Disclaimer**

This presentation has been prepared for internal use of ICAI and its members. The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation or any views of Meghraj Capital. The presentation is made with utmost professional caution but in no manner guarantees the content for use by any person. It is suggested to go through original statute / notification / circular / pronouncements before relying on the matter given. The presentation is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this presentation will be accepted by me. Professional advice recommended to be sought before any action or refrainment.

Annexures: Sample Transaction Documents:

**Sample NDA:**

Source: [http://blawfirm.com/global\\_pictures/Standard%20NDA%20by%20Axial.pdf](http://blawfirm.com/global_pictures/Standard%20NDA%20by%20Axial.pdf)

This Non-Disclosure Agreement (the "Agreement"), effective as of the date last entered below (the "Effective Date"), is entered into by and between \_\_\_\_\_ (the "Disclosing Party") and the Recipient named below (the "Recipient", and together with the Disclosing Party, the "Parties", and each, a "Party"). In connection with the consideration of a possible investment or financing transaction (the "Purpose"), the Recipient desires to receive certain information from the Disclosing Party that is non-public, confidential, or proprietary in nature; and In consideration of the mutual covenants, terms and conditions set forth herein, the Parties agree as follows:

1. Confidential Information. Except as set forth in Section 2 below, "Confidential Information" means all non-public, confidential or proprietary information disclosed on or after the Effective Date, by the Disclosing Party to the Recipient or its affiliates, or to any of such Recipient's or its affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants, financing sources or advisors (collectively, "Representatives"), however disclosed, including, without limitation: (a) all information concerning the Disclosing Party's and its affiliates', and their customers' and suppliers', past, present and future finances, customer information, supplier information, products, services, know-how, forecasts, business, marketing, development, sales and other commercial strategies; (b) source and object code, programs, drawings, the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, unpublished patent applications and other confidential intellectual property; and (c) all notes, analyses, compilations, reports, studies, samples, data, statistics, summaries, interpretations and other materials prepared by or for the Recipient or its Representatives that contain or derive from the foregoing, and any other information that would reasonably be considered non-public, confidential or proprietary given the nature of the information and the Parties' businesses.

2. Exclusions from Confidential Information. Except as required by applicable federal, state or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that: (a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any act or omission by the Recipient or any of its Representatives; (b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by any contractual obligation; (c) was known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; (d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to Confidential Information; or (e) is Residual Information. "Residual Information" means the ideas, know-how and techniques that would be retained in the unaided memory of an ordinary person skilled in the art, not intent on appropriating the proprietary information of the Disclosing Party, as a result of such person's access to, use, review, evaluation, or testing of the Confidential Information of the Disclosing Party for the purposes described herein. A person's memory is unaided if the person has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it. Nothing herein shall be deemed to grant to the Recipient a license under the Disclosing Party's intellectual property rights.

3. Recipient Obligations. The Recipient shall protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Recipient would protect its own confidential information, but in no event with less than a commercially reasonable degree of care; not use the Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose, including without limitation, to reverse engineer, disassemble, decompile or design around confidential intellectual property; not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who need to know the Confidential Information in relation to the Purpose and are informed of the obligations hereunder and agree to abide by the same. Recipient will promptly notify the Disclosing Party of any unauthorized disclosure of Confidential Information or other breaches of this Agreement.

4. Required Disclosure. Any Disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "Legal Order") shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall make commercially reasonable efforts to provide the Disclosing Party with: (a) prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other remedy; and (b) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose only that portion of the Confidential Information which, on the advice of the Recipient's legal counsel, such Legal Order specifically requires.

5. Return or Destruction of Confidential Information. Upon the expiration or termination of this Agreement, or at the Disclosing Party's request at any time during the term of this Agreement, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and confirm the same in writing to the Disclosing Party; provided, that the Recipient and its Representatives may retain such Confidential Information as is necessary to enable it to comply with its reasonable document retention policies.

6. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire 18 months from the Effective Date, provided that either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement, irrespective of termination of this Agreement, shall survive until the 18 month anniversary of this Agreement, even after the return or destruction of Confidential Information by the Recipient (the "Confidential Period"), provided that for any and all trade secrets of the Disclosing Party, the Confidential Period shall last for as long as such Confidential Information qualifies as a trade secret under applicable federal, state and/or local law.

7. No Transfer of Rights, Title or Interest. The Disclosing Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all Confidential Information.

8. No Other Obligation. The Parties agree that this Agreement does not require or compel the Disclosing Party to disclose any Confidential Information to the Recipient, or obligate any party to enter into a business or contractual relationship. Either party may terminate discussions at any time.

9. Remedies. The Recipient acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by the Recipient or its Representatives. Therefore, in addition to all other remedies available at law, the Disclosing Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Recipient hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

10. Non-Solicitation and Non-Circumvention. During the term of this Agreement and for a period of twelve (12) months after the expiration or termination of this Agreement, without the Disclosing Party's prior written consent, the Recipient and its Representatives shall not contact or solicit an employee of the Disclosing Party for the purpose of hiring them, solicit the business of any client, customer or licensee of the Disclosing Party or outside of the ordinary course of business, directly or indirectly contact or participate in communications with any disclosed companies, entities or persons (including each of their affiliates, parents or subsidiaries). Notwithstanding anything to the contrary herein, the Recipient and its Representatives shall not be restricted from hiring any employee of Disclosing Party who responds to a general solicitation for employment not directed towards the Disclosing Party's employees.



11. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of Laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware.

12. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing by email and shall be deemed to have been given on the date sent by e-mail if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient to the email address provided by the parties at the time hereof.

13. Miscellaneous. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other understandings and agreements with respect to such subject matter. If any term hereof is invalid or unenforceable, it shall not affect any other term or provision of this Agreement. Neither party may assign this Agreement without written consent of the other party. No waiver shall be deemed or implied hereunder.

[Signature Page Follows]

Sample Binding Letter:

Source: <http://pages.stern.nyu.edu/~igiddy/letterofintent.htm>

Ladies and Gentlemen:

This letter agreement sets forth our agreement and understanding as to the essential terms of the sale to \_\_\_\_\_ (the "Purchaser") by \_\_\_\_\_ (the "Seller") of the Seller's business (the "Business"), located in \_\_\_\_\_ and engaged in \_\_\_\_\_. The parties intend this letter agreement to be binding and enforceable, and that it will inure to the benefit of the parties and their respective successors and assigns.

1. Purchased Assets. At the closing, the Purchaser will purchase substantially all of the assets associated with the Business, including all inventories, all intellectual property, all accounts and notes receivable, all contracts and agreements, all equipment, all legally assignable government permits, and certain documents, files and records containing technical support and other information pertaining to the operation of the Business.

2. Assumed Liabilities. The Purchaser will assume as of the closing date only those liabilities and obligations (i) arising in connection with the operation of the Business by the Purchaser after the closing date, and (ii) arising after the closing date in connection with the performance by the Purchaser of the contracts and agreements associated with the Business.

3. Purchase Price. The purchase price will be \$\_\_\_\_\_, payable in cash in immediately available funds on the closing date.

4. Pre-Closing Covenants. The parties will use their reasonable best efforts to obtain all necessary third-party and government consents (including all certificates, permits and approvals required in connection with the Purchaser's operation of the

Business). The Seller will continue to operate the Business consistent with past practice. The parties agree to prepare, negotiate and execute a purchase agreement which will reflect the terms set forth in this letter agreement, and will contain customary representations and warranties.

5. Conditions to Obligation. The Purchaser and the Seller will be obligated to consummate the acquisition of the Business unless the Purchaser has failed to obtain, despite the parties' reasonable best efforts, all certificates, permits and approvals that are required in connection with Purchaser's operation of the Business.

6. Due Diligence. The Seller agrees to cooperate with the Purchaser's due diligence investigation of the Business and to provide the Purchaser and its representatives with prompt and reasonable access to key employees and to books, records, contracts and other information pertaining to the Business (the "Due Diligence Information").

7. Confidentiality; Non-competition. The Purchaser will use the Due Diligence Information solely for the purpose of the Purchaser's due diligence investigation of the Business, and unless and until the parties consummate the acquisition of the Business the Purchaser, its affiliates, directors, officers, employees, advisors, and agents (the Purchaser's "Representatives") will keep the Due Diligence Information strictly confidential. The Purchaser will disclose the Due Diligence Information only to those Representatives of the Purchaser who need to know such information for the purpose of consummating the acquisition of the Business. The Purchaser agrees to be responsible for any breach of this paragraph 7 by any of the Purchaser's Representatives. In the event the acquisition of the Business is not consummated, the Purchaser will return to the Seller any materials containing Due Diligence Information, or will certify in writing that all such materials or copies of such materials have been destroyed. The Purchaser also will not use any Due Diligence Information to compete with the Seller in the event that the acquisition of the Business is not consummated. The provisions of this paragraph 7 will survive the termination of this letter agreement.

8. Employees of the Business. Until the consummation of the acquisition of the Business, or in the event that the parties do not consummate the acquisition of the Business, the Purchaser will not solicit or recruit the employees of the Business.

9. Exclusive Dealing. Until \_\_\_\_\_, the Seller will not enter into any agreement, discussion, or negotiation with, or provide information to, or solicit, encourage, entertain or consider any inquiries or proposals from, any other corporation, firm or other person with respect to (a) the possible disposition of a material portion of the Business, or (b) any business combination involving the Business, whether by way of merger, consolidation, share exchange or other transaction. If for any reason the acquisition of the Business is not consummated, and the Seller is unable to enforce the provisions of this letter agreement, the Buyer will pay to the Seller a break-up fee which will equal the sum of 1% of the purchase price, and the Seller's expenses in connection with the negotiation of the acquisition.

10. Public Announcement. All press releases and public announcements relating to the acquisition of the Business will be agreed to and prepared jointly by the Seller and the Purchaser.

11. Expenses. Subject to the provisions in paragraph 9 of this letter agreement, each party will pay all of its expenses, including legal fees, incurred in connection with the acquisition of the Business.

12. Indemnification: The Seller represents and warrants that the Purchaser will not incur any liability in connection with the consummation of the acquisition of the Business to any third party with whom the Seller or its agents have had discussions regarding the disposition of the Business, and the Seller agrees to indemnify, defend and hold harmless the Purchaser, its officers, directors, stockholders, lenders and affiliates from any claims by or liabilities to such third parties, including any legal or other expenses incurred in connection with the defense of such claims. The covenants contained in this paragraph 12 will survive the termination of this letter agreement.

If you are in agreement with the terms of this letter agreement, please sign in the space provided below and return a signed copy to \_\_\_\_\_ by the close of business on \_\_\_\_\_. Upon receipt of a signed copy of this letter, we will proceed with our plans for consummating the transaction in a timely manner.

Very truly yours,

XYZ CORPORATION

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

[Name and Title]

\_\_\_\_\_

ABC CORPORATION

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

[Name and Title]

Sample Shareholder Agreement:

Source: <https://www.docracy.com/Omb1qlv6957/shareholder-agreement>

## SHAREHOLDER AGREEMENT

THIS AGREEMENT, dated [AGREEMENT DATE] is entered into amongst the following individuals constituting all of the current shareholders of [CORPORATION] (“Corporation”):

[SHAREHOLDER 1.FirstName] [SHAREHOLDER 1.LastName]

[SHAREHOLDER 2.FirstName] [SHAREHOLDER 2.LastName]

[SHAREHOLDER 3.FirstName] [SHAREHOLDER 3.LastName]

[SHAREHOLDER 4.FirstName] [SHAREHOLDER 4.LastName]

(referred to collectively as “Shareholders” and individually as “Shareholder”) and the Corporation.

### Article 1 - Purpose of Agreement

1.1 The Shareholders are all the shareholders of the Corporation, a [STATE OF INCORPORATION] corporation and are the sole Directors and Officers of the Corporation.

1.2. The Shareholders are entering into this Shareholder Agreement to provide for the management and control of the affairs of the Corporation, including management of the business, division of profits, disposition of shares, and distribution of assets on liquidation.

### Article 2 - Shares Subject to Agreement

2.1. The Shareholders listed above own the number of shares of common stock, and approximate percentage of company ownership, as listed below:

Name Number of Shares Percentage of Ownership

[SHAREHOLDER 1.FirstName] [SHAREHOLDER 1.LastName] [SHARES 1] [PERCENT 1]

[SHAREHOLDER 2.FirstName] [SHAREHOLDER 2.LastName] [SHARES 2] [PERCENT 2]

[SHAREHOLDER 3.FirstName] [SHAREHOLDER 3.LastName] [SHARES 3] [PERCENT 3]

[SHAREHOLDER 4.FirstName] [SHAREHOLDER 4.LastName] [SHARES 4] [PERCENT 4]

2.2. The shares listed above constitute all of the issued and outstanding capital stock of the Corporation. The Corporation acknowledges receipt from each Shareholder of the full consideration for the respective shares listed above, and each Shareholder acknowledges receipt of certificates representing his or her shares. All of the shares listed above and any additional shares of the capital stock of the Corporation that may be acquired by the Shareholders in the future shall be subject to this Agreement.

### Article 3 - Management and Control

3.1. Board of Directors.

Subject to termination in accordance with this Agreement, each Shareholder to this Agreement will be a director of the Corporation.

3.2. Authority of Directors.

During the term of this Agreement, the directors will, when appropriate, perform the following acts:

3.2.1. Determine in good faith the “current assets” of the Corporation for purposes of corporate distributions as required by the California Corporations Code;

3.2.2. Cause an quarterly report to be sent to the Shareholders not later than 30 days after the close of the quarter year, such quarterly report will be used to identify and approve any distributions in accordance with this Agreement;

3.2.3. After filing the Corporation's original Articles of Incorporation, file any informational certificates that may be required by the California Secretary of State;

3.2.4. Cause the Corporation to maintain the books, records, and other documents required by California law;

3.2.5. Use best efforts to cause the business of the corporation in accordance with sound business practices.

3.3. President.

Subject to the limitations in Section 3.7, the President of the Corporation will be its managing officer. The President will control the day-to-day operations of the business and affairs of the Corporation, including the following: [PRESIDENT ACTIONS W/O APPROVAL].

3.4. Vice President.

Subject to the limitations in Section 3.7, the Vice President of the Corporation will [ VICE PRESIDENT DUTIES].

3.5. Treasurer.

Subject to the limitations in Section 3.7, the Treasurer of the Corporation will [ TREASURER DUTIES].

3.6. Secretary.

Subject to the limitations in Section 3.7, the Secretary of the Corporation will [ SECRETARY DUTIES].

3.7. Limitations on actions of officers.

The following actions shall not be made by any one Officer without the approval of all Officers of the Corporation: [JOINT APPROVAL REQUIRED ACTIONS].

3.8. Approval of All Shareholders.

Notwithstanding any contrary provisions in this Shareholder Agreement, the written consent of all of the Shareholders is required to approve the following actions: mergers or consolidations involving the Corporation; amendment or repeal of the Articles of Incorporation of the Corporation; issuance of shares of any class or other rights relating to the issuance of shares of the Corporation; transfer of all, or substantially all, the assets of the Corporation; amendment of this Shareholder Agreement; or voluntary dissolution of the Corporation.

3.9. Employment of Shareholders.

Shareholders may be employed as officers of the Corporation, as long as they hold shares of stock of the Corporation, are active in its business, and, in a satisfactory manner, perform their duties and responsibilities as set forth in this Agreement, the Articles of Incorporation and the Bylaws of the Corporation. The title, duties, and the other terms of employment, including the annual salary, will be memorialized in a separate document and must be both approved, and only may be subsequently altered, only by the unanimous written consent of the Shareholders.

Article 4 - Noncompetition and Trade Secrets

#### 4.1. Noncompetition.

Each Shareholder agrees that as long as he or she is the owner, or in control of, any of the Corporation's shares, the Shareholder will not be employed, concerned, or financially interested, either directly or indirectly, in the same or a similar business as that conducted by the Corporation, or compete with the Corporation.

#### 4.2. Trade Secrets.

Each Shareholder acknowledges that the customer lists, trade secrets, processes, methods, and technical information of the Corporation and any other matters designated by the President or by the written consent of all Shareholders are valuable assets. Unless he or she obtains the written consent of each of the other Shareholders, each Shareholder agrees never to disclose to any individual or organization, except in authorized connection with the business of the Corporation, any customer list, or any name on that list, or any trade secret, process, or other matter referred to in this paragraph while the Shareholder holds, or has the control of, any shares of the Corporation, or at any later time.

### Article 5 - Distributions of Income and Losses

#### 5.1. Determination of Net Income and Loss.

The net profits or net losses of the Corporation for each fiscal year will be determined on an accrual basis in accordance with generally accepted principles of accounting.

#### 5.2. Retaining Net Income.

The Corporation will retain [RETAINED INCOME THRESHOLD] (\$[RETAINED INCOME DOLLAR AMOUNT]) of its net income, plus any additional amount the Shareholders reasonably believe necessary to meet financial needs of the Corporation, including, but not limited to the development or expansion of its business.

#### 5.3. Regular Distributions of Net Income.

Subject to any retained earnings and to the statutory requirements related to corporate distributions, the net income of the Corporation may be distributed quarterly to the Shareholders in proportion to the number of shares of the Corporation owned by them. Such distributions shall be approved by all Shareholders. Shareholders may elect to not take a distribution, but instead offer the moneys as a loan to the Corporation.

### Article 6 - Shareholder Loans To The Corporation

#### 6.1. Loan conditions.

A Shareholder may issue a loan to the Corporation upon approval by all Shareholders and only under the following conditions, unless otherwise agreed upon. [SHAREHOLDER LOAN CONDITIONS].

#### 6.2. Repayment.

Repayment of Shareholder loans by the Corporation shall occur when the Shareholders agree that there are enough corporate funds to pay the loan. Loans to Shareholders shall be paid in order of priority with the oldest loan being paid first, unless the Shareholder waives such write to first payment.

### Article 7 - Dissolution of Corporation

### 7.1. Unanimous consent required.

All Shareholders must consent to voluntary dissolution.

### 7.2. Procedures for dissolution.

On commencement of dissolution proceedings (either by election of all Shareholders or otherwise), the Corporation will cease to carry on business except as necessary to wind up its business and distribute its assets. The President, or any Shareholder or Shareholders appointed by the President, will perform the following acts, as necessary, to wind up the affairs of the Corporation:

Continue the business as necessary for the winding up of the affairs of the Corporation;

Carry out contracts and collect, pay, compromise, and settle debts and claims for or against the Corporation (including participating in litigation, whether as plaintiff or defendant relating to the same);

Sell at public or private sale, exchange, convey, or otherwise dispose of all or any part of the assets of the Corporation for cash in an amount considered reasonable by the President, or his or her appointee(s);

Make contracts and take any steps in the name of the Corporation that are necessary or convenient in order to wind up the affairs of the Corporation; and/or

Employ agents and attorneys to liquidate and wind up the affairs of the Corporation.

### 7.3. Distribution of assets.

As part of the dissolution process, the President, or the President's appointee(s), will apply the assets of the Corporation in the following order:

To all debts and liabilities of the Corporation in accordance with the law, including the expenses of dissolution and liquidation, but excluding any Shareholder loans;

To all Shareholder loans, with unpaid interest;

To undistributed net profits of the Corporation;

To repayment of the purchase price of the shares of the Corporation actually paid by each Shareholder; and, finally, should any assets remain;

To the Shareholders in proportion to the number of shares of the Corporation held by each.

## Article 8 - Transfer of Shares

### 8.1. Shares Acquired for Investment.

Each of the Shareholders acknowledges and represents that he or she has obtained and accepted his or her shares in good faith, for investment and for his or her own account, and not with a view to distribution or resale.

### 8.2. Restrictions on Transfer.

To accomplish the purposes of this Agreement, any transfer, sale, assignment, or encumbrance of any of the shares of the Corporation, other than according to the terms of this Shareholder Agreement is void.

### 8.3. Buy-Sell Upon Death of Shareholder.

Upon the death of a Shareholder, the Corporation shall purchase, and the deceased Shareholder's estate or successor or successors in interest (the "Deceased Shareholder"), shall

sell, all the Corporation's stock presently owned by such Stockholder. This sale will be made within sixty (60) days after the appointment of a legal representative for the Deceased Shareholder's estate.

#### 8.4. Buy-Sell for Other Reasons.

A Shareholder may voluntarily sell all the Corporation's stock presently owned by such Shareholder ("Departing Shareholder"). Any and all sales hereunder with respect to the Departing Shareholder shall be made within sixty (60) days after written notice of intent to sell served on the Corporation and the remaining Shareholders.

#### 8.5. Right of First Refusal.

In the event of mandatory or voluntary buy-sell under this Section, the non-departing or surviving Shareholder shall have the right of first refusal to purchase all shares that would otherwise be repurchased by the Corporation at the purchase price set forth above. To exercise this right, the non-departing or surviving Shareholders provide written notice to the Corporation no later than ten (10) days prior to the effective date of sale.

### Article 9 - Dispute Resolution

9.1. Any dispute relating to this Shareholder Agreement, or arising out of or relating to operations of the Corporation, or the rights or obligations of the Shareholders, shall be settled by: [RESOLUTION OPTIONS].

### Article 10 - Miscellaneous Provisions

#### 10.1. Necessary Acts.

All parties to this Shareholder Agreement will perform any acts, including executing any documents, that may be reasonably necessary to fully carry out the provisions and intent of this Agreement.

#### 10.2. Notices.

All notices, demands, requests, or other communications required or permitted by this Shareholder Agreement (other than routine communication relative to business operations) will be in writing sent to the following:

[CORPORATION]

[CORPORATION ADDRESS]

[CORPORATION CITY], [CORPORATION STATE], [CORPORATION ZIP]

[SHAREHOLDER 1.FirstName] [SHAREHOLDER 1.LastName]

[SHAREHOLDER 1 ADDRESS]

[SHAREHOLDER 1 CITY], [SHAREHOLDER 1 STATE], [SHAREHOLDER 1 ZIP]

[SHAREHOLDER 2.FirstName] [SHAREHOLDER 2.LastName]

[SHAREHOLDER 2 ADDRESS]

[SHAREHOLDER 2 CITY], [SHAREHOLDER 2 STATE], [SHAREHOLDER 2 ZIP]

[SHAREHOLDER 3.FirstName] [SHAREHOLDER 3.LastName]

[SHAREHOLDER 3 ADDRESS]

[SHAREHOLDER 3 CITY], [SHAREHOLDER 3 STATE], [SHAREHOLDER 3 ZIP]

[SHAREHOLDER 4.FirstName] [SHAREHOLDER 4.LastName]



[SHAREHOLDER 4 ADDRESS]

[SHAREHOLDER 4 CITY], [SHAREHOLDER 4 STATE], [SHAREHOLDER 4 ZIP]

10.3. Attorneys' Fees.

In the event of any litigation concerning this Shareholder, the prevailing party shall be entitled, in addition to any other relief that may be granted, to reasonable attorneys' fees.

10.4. Binding on Successors and Assigns.

This Agreement will be binding on the parties to the Agreement and on each of their heirs, executors, administrators, successors, and assigns.

10.5. Severability.

If any provision is unenforceable or invalid for any reason, the remaining provisions shall be unaffected by such a holding.

10.6. Governing Law.

This Agreement shall be construed according to and governed by the laws of the State of California.

10.7. Entire Agreement.

This document constitutes the entire Shareholder Agreement of the Corporation and correctly sets forth the rights, duties, and obligations of each Shareholder and of each Shareholder to the other. Any modifications must be in writing and approved by all Shareholders.

Executed on a[Ct ITY AND STATE OF SIGNING].

THE SHAREHOLDERS

\_\_\_\_\_  
[SHAREHOLDER 1.FirstName] [SHAREHOLDER 1.FirstName]

\_\_\_\_\_  
[SHAREHOLDER 2.FirstName] [SHAREHOLDER 2.FirstName]

\_\_\_\_\_  
[SHAREHOLDER 3.FirstName] [SHAREHOLDER 3.LastName]

\_\_\_\_\_  
[SHAREHOLDER 4.FirstName] [SHAREHOLDER 4.FirstName]

Sample Term Sheet:

Source: <http://themusingsofthebigredcar.com/wp-content/uploads/2015/02/Sample-Term-Sheet-company-sale.pdf>

This Sample Term Sheet is intended as an exemplar to indicate the typical definitive terms under which a selling entity would sell an operating company to a third party buyer.

It is an exemplar only and is intended solely to provoke thinking and to provide an outline for considering such a transaction. Its intended audience is the selling entity's Chief Executive Officer.

All sellers must solicit advice from their attorneys before making any legally binding agreements. Nothing in this Sample Term Sheet is intended to constitute legal advice.

**Company:** Insert the name of the selling company including the mailing address here.

Describe the business in a short statement.

**Seller:** Insert the name of the selling company (same as above) and the principal point of contact for the transaction together with snail mail address, email address and cell phone number.

**Buyer:** Insert the name of the buying company and the principal point of contact for the transaction together with snail mail address, email address and cell phone number.

**Authority:** The Seller and the Buyer have full authority, subject to the provisions of this Letter of Intent, to enter **Sample Term Sheet Page: 2**

into these negotiations and to execute this Letter of Intent.

**Purchase price:** The Purchase Price shall be \$x00,000,000 together with the cash on hand plus the difference between net receivables and net payables at the time of the closing of the transaction.

**Payment terms:** The Purchase Price shall be paid in accordance with the following schedule.

**Cash downpayment** \$x00,000,000

**Promissory note** The delivery of a Promissory Note in the initial balance of the Purchase Price minus the Cash Downpayment.

**Term of the Promissory Note:** X years

**Interest rate** X% per annum

**Amortization period** X years

**Payment frequency** Monthly/Quarterly/Annually

**Payment** \$X

**Collateral, guaranty** Describe the collateral or guaranty of the Promissory Note here.

**Asset Sale and Purchase Agreement:** The parties will enter into a binding Asset Sale and Purchase Agreement incorporating the terms of this Letter of Intent.

Nothing in this Letter of Intent shall be binding except for the Confidentiality provision.

**Due diligence materials** The Seller will deliver to the Buyer a complete package of due diligence materials as enumerated in the Asset Sale and Purchase Agreement within **Sample Term Sheet**

**Page: 3**

seven (7) days of the effective date of the Agreement.

**Due diligence period** 30 days from the receipt of the last due diligence materials

**Closing date** 30 days after the conclusion of the due diligence period

**Earnest money deposit** 5% of the Purchase Price

**Employment agreements:** As a condition to closing, the Buyer will enter into Employment Agreements with critical personnel including, but not limited to, the CEO, COO, CFO of the Seller.

The terms of these Employment Agreements will be as summarized on Exhibit A --- Employment Agreement terms.

**Contingency:** This Letter of Intent is an offer to sell by the Seller and shall be accepted, if desired, by the Buyer. This Letter of Intent is intended only to outline the business terms of the Asset Sale and Purchase Agreement referred to in this document.

Other than the Confidentiality provision, nothing in this Letter of Intent is binding upon the parties.

**Confidentiality:** The parties agree to maintain the strict confidentiality of this Letter of Intent including its very existence except that its existence and content may be revealed to the Board of Directors, legal advisers, financial advisers and senior management of their respective companies.

This provision of this Letter of Intent shall be binding upon the parties for one year from the date of its offering by the Seller. **Sample Term Sheet Page: 4**

**Expiration:** This Letter of Intent expires seven (7) calendar days from the date entered by the Seller on the execution page; and, if accepted by the Buyer, shall expire automatically if no binding Asset Sale and Purchase Agreement is entered into by the parties within thirty (30) calendar days of the date upon which the Seller signed this Letter of Intent.

**Termination:** Either party may terminate this Agreement by simple written notice, including email notice, before a binding Asset Sale and Purchase Agreement is entered into between the parties.

**Governing law:** This Letter of Intent shall be governed by the laws of the State of \_\_\_\_\_.

**Dispute resolution:** In the event that any dispute should arise during the pendency of this Letter of Intent, the sole and exclusive remedy to the parties shall be to terminate the Letter of Intent.

**AGREED:**

**Seller: Buyer:**

\_\_\_\_\_

**Name Name**

**Its: President, CEO**

**Date:** \_\_\_\_\_ **Date:** \_\_\_\_\_