

Disclaimer

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This sample was prepared by Thomas M. Braniff, JD, CPCU. Mr. Braniff is the Managing Partner of Braniff Attorneys / Counselors, and President of Texas Insurance Consulting. Both firms concentrate their activities in the area of insurance, regulatory and risk management matters. Mr. Braniff has previously owned and operated general lines agencies, managing general agencies, and insurance companies. He can be contacted directly for additional information or regarding representation at 713-664-0604 or tomas@braniff-law.com.

[date]

[Name]

[Agency Name]

[Street Address]

[Suite Number]

[City, State, Zip Code]

Re: Letter of Intent Regarding the Acquisition of Certain Assets of
[Agency Name]

Dear Mr./Ms. [Name]:

We are pleased to set forth in this Letter of Intent certain of the terms upon which [Name], or an affiliate (“Buyer”), would be prepared to negotiate a possible acquisition of the book of business and expiration rights, the furniture, fixtures and equipment, and certain other assets from [Name] (“Seller”). In addition, Buyer wishes to obtain appointments from certain of the insurance companies that Seller currently represents.

This letter contemplates the negotiation, execution and delivery of a definitive Purchase Agreement (“Agreement”) and other related documents, the completion of a due diligence review by Buyer, and Buyer’s obtaining appointments from designated insurance companies. An outline of the proposed transaction is set forth below.

1. **Purchase Price.** The estimated purchase price for the assets and rights to be acquired shall be _____ (\$____,000.00), payable as follows:
 - (a) _____percent (____%) to be paid in cash at the time of closing.
 - (b) _____percent (____%) to be paid in cash on each anniversary of the closing of the Agreement, for _____ (_____) successive years.

The actual purchase price to be paid by Buyer, and the terms and conditions of payment, shall be determined by and between the Buyer and Seller in their ongoing discussions negotiations.

2. **Due Diligence.** Buyer understand that the Seller is the owner of one hundred percent (100%) of the book of insurance business and expiration rights, certain furniture, fixtures and equipment, and other assets used by Sellers in connection with the insurance operations of Seller. Buyer further understands that such assets are completely unencumbered except as may be disclosed by Seller. Within _____(____) days of the Effective Date, Buyer shall complete its review of the books, records, operations and procedures of Seller. Seller hereby authorizes Buyer to conduct and complete such review.
3. **Cessation of Negotiations.** In consideration of the mutual promises contained herein, during the pendency of this Letter of Intent, and during the term of the Agreement that supersedes this Letter of Intent, Seller agrees that it will not entertain or solicit offers from any of persons or third parties for the acquisition of the assets of Seller; and will not enter into any agreement, oral or written as to such acquisition, other than this Letter of Intent and the Agreement.
4. **Conditions to Closing.** Closing of the transaction shall be subject to, among other things, the following conditions:
 - (a) Prior to the closing of the proposed transaction, Buyer and Seller will conduct an operating review of the respective entities, and make their best effort to formulate a business plan that will provide a mutually beneficial integration of Seller's and Buyer's operations.
 - (b) All of Seller's employee salaries will be reviewed by the parties and established by mutual consent prior to the closing of the transaction contemplated by this letter. These salaries shall remain in effect at the levels agreed to; and thereafter will be subject to reviews in accordance with Buyer's normal procedures and practices. All employees of Seller who become employees of the Buyer will likewise become eligible to participate in benefit programs that may be made available to Buyer's other employees, in accordance with the provisions of those plans. Except where prohibited by law or regulation or the plan itself, all individuals that become employees of Buyer at closing will enter such plans with

accumulated service credit for time previously employed by Seller, but without vested benefits (other than such rollovers of individual accounts as may be permitted under applicable ERISA regulations).

- (c) The proposed transaction shall have received all requisite approvals from any entity having jurisdiction over the parties, and all requisite corporate approvals from the respective Board of Directors of Buyer and Seller and from the Stockholder(s) of Seller.

- (d) The Agreement shall contain representations of the Stockholder(s) of Seller as to the books and records and financial data of Seller, and the Stockholders(s) of Seller shall fully indemnify Buyer for misrepresentations and undisclosed liabilities for a period of _____ (____) years (or to the close of applicable assessment periods in the case of tax liabilities) following the closing.
- (e) The Agreement shall provide that _____ percent (____%) of each payment of the consideration to be paid to Seller shall be paid into an escrow account, which shall be held by Buyer for a period of _____ (____) years from the closing date as collateral security for the indemnification obligations of Seller and the Stockholder(s) of Seller.
- (f) Seller and Buyer shall each represent that there are no brokerage or finder's fees which may be payable in connection with the proposed transaction.
- (g) The parties acknowledge that Buyer plans to use Seller's name, "_____" and the acronym "_____" in Buyer's future operations.
- (h) _____ shall enter into an initial four (4) year Employment Agreement in a form satisfactory to Buyer and Seller, which may include:
[insert]
- (i) For those employees of Seller that become employees of Buyer, Buyer will agree to assist with the payment of necessary license fees and required continuing education, in conformity with Buyer's standard practices.
- (j) At the closing, Buyer will assume only the following liabilities of Seller:
- (1) All obligations and rights under the lease agreement relating to Seller's office space located at [address].
 - (2) The obligations and rights under other existing leases or contracts, as may be agreed to by the parties and listed in a final Agreement.
- (k) From and after the closing, Seller and [Name], Individually, will assume the following liabilities of Seller:
- (1) All obligations and rights under any automobile lease agreements currently existing.
 - (2) All obligations and rights under any promissory note agreements relating to any automobiles that may be owned by Seller, including full title and ownership to any such automobiles.

- (3) All obligations under any other promissory notes, lease agreements, or other contracts or commitments undertaken by Seller and/or [Name], Individually.
 - (4) All obligations or expenses for taxes or other charges owing to any jurisdiction relating so Seller's operations prior to closing.
 - (5) Any other obligations or expenses that may arise relating to Seller's operations prior to closing.
 - (l) Mutual execution and delivery of an Agreement which shall provide for, without limitations, the following:
 - (1) Customary covenants (including non-piracy, non-compete, and non-disclosure covenants) and other conditions and terms and provisions as shall be agreed to by Buyer and Seller.
 - (2) Completion by Buyer of a comprehensive due diligence review and examination of the books and records of Seller, which shall be satisfactory to Buyer in its sole discretion.
 - (3) Satisfaction of customary conditions to closing.
 - (m) From and after the closing, Buyer will agree to service the in force and expired business generated by Seller prior to the closing. It is anticipated that Buyer will handle all of Seller's receivables, and premium and premium tax payables, that are due to or from Seller as of the closing date, or that become due to or from Seller, on all transactions in which the underlying policy is effective on or before the closing date. Seller, however, shall remain responsible for any amounts that Buyer may be required to pay in connection with such transactions which exceeds the cash balance of Seller's premium trust account which is transferred to Buyer at closing. The details of how the accounting and reconciliation of such business shall be handled, will be determined between the parties during their discussions and negotiations.
5. **Access for Due Diligence.** From the Effective Date hereof through the earlier of the termination of this Letter of Intent or the date of closing of the transaction contemplated by the Agreement, Seller will afford Buyer and its representatives, full and complete access to all books, records, contracts, facilities and personnel of Seller, and other materials and persons as deemed appropriate by Buyer for the purpose of completing its evaluation with respect to the transaction contemplated hereby.

6. **Termination.** This Letter of Intent, once executed by you, shall automatically terminate on the earlier to occur of:
 - (a) The written notice from Buyer to Seller that the review has been completed and the results thereof are not satisfactory to Buyer, in its sole discretion.
 - (b) The [calendar date] (___th) calendar day after the Effective Date, unless the parties have entered into an Agreement on or before that date.
 - (c) The date set forth in a written agreement signed by both Buyer and Seller.
 - (d) Ten (10) days after the date first above written if not accepted by the Seller.

7. **Expenses.** Each of the parties hereto will bear its own expenses incident to the transactions contemplated hereby; including, but no limited to, all fees of attorneys or other advisors, whether or not the transaction described herein shall be concluded. The provisions of this paragraph shall survive the termination of this Letter of Intent.

8. **Date of Closing.** It is the parties' intention that all conditions to closing would be satisfied as expeditiously as reasonably possible. It is estimated that the closing shall take place on or before [date], or such other date mutually agreeable to the parties.

9. **Acknowledgement.** The parties hereto acknowledge and agree that this Letter of Intent is being delivered as an indication of interest, and to set forth the basic framework for proceeding to negotiate the proposed transaction described herein. This Letter of Intent is not intended to be and does not represent a contract or agreement binding upon any of the parties hereto or anyone else unless the parties agree specifically herein that certain provisions shall be binding. Further, nothing herein is intended to be, or shall be construed as, an agreement to agree and, unless and until an Agreement is entered into, none of Buyer or its affiliates will be under any legal obligation of any kind whatsoever with respect to any of the matters herein set forth, except as otherwise set forth herein.

10. **Binding Provisions.** The parties agree to be bound by the provisions of paragraphs 1, 2, 3, 5, 6 and 7 of this Letter of Intent until this Letter is terminated in accordance with the provisions of paragraph 6, or superseded by an Agreement.

11. **Effective Date.** The Effective Date is the date set forth opposite the signature of the Seller below.

If you accept the foregoing proposal as a Letter of Intent between the parties as to the proposed purchase and sale of assets of Seller, please so indicate by signing in the space provided below, and we will proceed to promptly complete our review and proceed with the negotiation of an Agreement.

Sincerely,

("Buyer")

By: _____

Agreed and accepted effective the ____ day of _____, 20__.

("Seller")

By: _____

_____, Individually ("Shareholder")
