

# Engagement Agreement

SUBJECT BUSINESS: Legal Business Name \_\_\_\_\_

Address \_\_\_\_\_ County \_\_\_\_\_ Phone Number : \_\_\_\_\_

Type/Category of Business: \_\_\_\_\_ Owner(s) \_\_\_\_\_

Ownership Structure: ( ) Individual ( ) Partnership ( ) Limited Liability Company ( ) Corporation

## Listing Terms and Provisions

Based on the mutual promises set forth below, Exodus Business Solutions (Broker) and \_\_\_\_\_ (Seller) hereby agree as follows:

1. Seller hereby appoints Exodus Business Solutions as seller's agent (broker), granting to broker the sole, exclusive, and irrevocable right to sell, exchange, lease, trade, or otherwise dispose of all or any portion of the business described above, including but not limited to its tangible and intangible assets, including furniture, fixtures, equipment, inventory, trademarks, trade names, customer lists, telephone number and listing, customer deposits, goodwill, licenses, and franchises on the proposed terms set forth herein or for any other terms to which seller agrees during the sole and exclusive period beginning on \_\_\_\_\_ and ending \_\_\_\_\_.

2. Broker hereby pledges to use its best efforts as part of broker's ordinary course of business to offer for sale and to procure a ready, willing, and able purchaser for the business. If required by seller, broker agrees to perform the specific marketing procedures as outlined in Addendum A to this contract. Broker is authorized to present any and all offers broker may receive in writing, until such time as seller accept(s) an offer to purchase. Seller agrees to advise broker as to how to handle backup offers. Further, seller(s) grants to broker the right to generically advertise the business. Finally, seller(s) agrees to review and respond to all offers to purchase in a timely fashion.

3. Broker is entitled to and seller agrees to pay a commission equal to \_\_\_\_\_ of the total purchase price (which includes cash and all other consideration furnished by buyer, including without limitation, the purchase price of the assets plus any obligations assumed by buyer or the purchase price of corporate stock plus all liabilities assumed by buyer in conjunction with purchase of said stock) or a minimum of \_\_\_\_\_, whichever is more, on or before closing, if any of the following occur:

A. Broker procures a ready, willing, and, able buyer during the sole and exclusive period on the proposed terms set forth below, or as otherwise mutually agreed on between buyer and seller, or

B. Seller sells, exchanges, leases, trades, or otherwise transfers any portion of the business during the sole and exclusive period, regardless of whether or not the broker was involved in or responsible for such transfer, or seller enters into a contract for sale without broker's assistance, accepts a deposit and/or opens escrow or formally gives notice of intent to sell, e.g. filing for bankruptcy reorganization/liquidation, or

C. Seller unilaterally takes business off the market during the term of this agreement or intentionally hinders or refuses to complete a sale, exchange, lease, or trade after contractually agreeing to do so with buyer, or

D. Seller sells, exchanges, leases, trades, or otherwise disposes of all or any part of the business within (2) years after expiration of this agreement (inclusive of amendments to extend this agreement) to any person(s), firm, or entity found by or registered with broker, or who became aware of business through broker's endeavors during listing period.

Broker may agree to waive compliance with any of the above conditions, but only with written, notarized notice signed by broker.

4. Seller represents and warrants that seller and the business are now and shall remain, in full compliance with all local, state, and federal laws, rules, and regulations regarding the operation and sale of the business.

5. Broker and seller hereby acknowledge that the transfer or other disposition of the lease (if applicable) for the above referenced business premises is only incidental to the sale of the business. No part of the broker's fee payable hereunder is consideration for services rendered, if any, in connection to the lease transfer. In the event that a new lease is to be negotiated and executed, broker is entitled to a commission equal to eight percent of gross rental payments over the entire duration of said lease. Broker is hereby given permission to contact landlord as soon as deemed necessary.

6. Seller understands and hereby acknowledges that all facts, figures, and all additional supporting documentation pertaining to the business, has been provided to broker by seller, and that broker will rely on seller's representation of such facts, figures, and other information when describing and promoting the business to potential purchasers without an investigation into the accuracy of such representations by seller. Therefore, seller hereby represents and warrants that all such facts, figures, and all additional supporting documents are true and accurate. Seller hereby agrees to indemnify and hold harmless broker against any all claims, demands, causes for actions, losses, damages, cost, and expenses including reasonable attorney's fees and fees on appeals arising out of breach of the warranty, and further agrees that the county in which broker's office is located, designated above, is proper venue for any dispute.

7. Seller will reimburse the broker for reasonable attorney's fees and all other cost and expenses incurred by broker in enforcing this agreement. Seller hereby grants broker a lien on all the assets and properties of the business to secure the payment to broker of all amounts payable by seller to broker under this contract, and seller appoints broker its attorney-in-fact to prepare on behalf of seller and to file the necessary documents to evidence and perfect said lien.

8. As agent for seller(s), broker, cooperating brokers (co-broker) and/or selected escrow agents are authorized to accept and hold all monies paid or deposited toward purchase of said business (with instructions explicitly described in relevant purchase offer/contract). In the event that buyer must forfeit said deposit (in accordance with instructions in relevant purchase offer/contract), broker is entitled to one-half of said amount, while not exceeding the amount of broker's commission as described above, as compensation for broker's efforts.

9. Seller understands that by this agreement broker does not guarantee the sale of the above business, but that broker will make an earnest and continued effort to sell the business during the sole and exclusive period.

10. If real property is available for sale along with this business, a separate listing contract will be executed and attached hereto.

11. This contract constitutes the entire agreement between the parties hereto, supersedes all previous agreements and understandings between them, and shall not be modified except in writing executed by the parties. No representations or promises are made other than as expressly set forth herein. Seller expressly acknowledges reading, understanding, and receiving a copy of this contract.

Proposed Terms of Sale

PURCHASE PRICE of \$ \_\_\_\_\_ includes broker's commission of eight percent of the total sales price, to be paid as follows:

\$ \_\_\_\_\_ Cash down payment (includes broker's commission of \$ \_\_\_\_\_) paid at settlement, through escrow, or at possession of the business by purchaser, whichever shall occur first

\$ \_\_\_\_\_ New note to owner, to be secured by assets of the business, and to be paid as follows:

Monthly payments of \$ \_\_\_\_\_ for \_\_\_\_\_ months at \_\_\_\_\_ percent per annum

\$ \_\_\_\_\_ Other terms, e.g. assumption of existing debt

\$ \_\_\_\_\_ PURCHASE PRICE

THIS IS A BINDING CONTRACT, PLEASE READ CAREFULLY AND OBTAIN LEGAL ASSISTANCE BEFORE SIGNING.

I/we represent and warrant that I/we constitute all the owners/partners/shareholders of subject business and hereby personally guarantee performance of the contract. Seller warrants that s/he is authorized to enter into this agreement and will effect a notarized corporate resolution to sell if necessary.

\_\_\_\_\_ Dated \_\_\_\_\_ \ \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

Sellers Signature

Employment accepted by Exodus Business Solutions, Keith Campbell