

EARN-OUT AGREEMENT

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This Earn-Out Agreement (this "**Agreement**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by and between:

[BUYER LEGAL NAME], a [STATE] [ENTITY TYPE, e.g. limited liability company] with its principal place of business at [BUYER ADDRESS] (the "**Buyer**"); and

[SELLER LEGAL NAME], a [STATE] [ENTITY TYPE OR "an individual"] with its [principal place of business / residence] at [SELLER ADDRESS] (the "**Seller**").

The Buyer and the Seller are each a "**Party**" and together the "**Parties**."

Recitals. The Buyer and the Seller are parties to that certain [NAME OF PURCHASE AGREEMENT, e.g. Asset Purchase Agreement / Share Purchase Agreement] dated [PURCHASE AGREEMENT DATE] (the "**Purchase Agreement**"), under which the Buyer acquired [DESCRIBE THE BUSINESS OR ASSETS, e.g. substantially all of the assets of [BUSINESS NAME]] (the "**Business**"). As part of the purchase price, the Parties agreed that the Seller may receive additional, contingent consideration based on the post-closing performance of the Business (the "**Earn-Out**"). This Agreement sets out the terms of the Earn-Out. In consideration of the mutual promises below, the Parties agree as follows.

1. Definitions and Interpretation

1.1 Earn-Out. "**Earn-Out**" means the additional contingent consideration payable to the Seller under this Agreement based on the achievement of the Performance Targets during the Earn-Out Period.

1.2 Earn-Out Period. "**Earn-Out Period**" means the period beginning on [START DATE] and ending on [END DATE], divided into the measurement periods described in Exhibit A (each, an "**Earn-Out Year**").

1.3 Performance Metric. "**Performance Metric**" means the financial or operational measure used to determine the Earn-Out, defined precisely in Exhibit A (for example, [Revenue / EBITDA / Gross Profit / Units Sold / a defined milestone]), together with the accounting policies, inclusions, and exclusions stated there.

1.4 Performance Targets. "**Performance Targets**" means the threshold, target, and (if applicable) maximum levels of the Performance Metric set out in Exhibit A that determine whether and how much Earn-Out is earned.

1.5 Earn-Out Statement. "**Earn-Out Statement**" means the written calculation of the Performance Metric and the resulting Earn-Out amount for an Earn-Out Year, prepared under Section 3.

1.6 Maximum Earn-Out. "**Maximum Earn-Out**" means the maximum aggregate amount payable under this Agreement, equal to [AMOUNT OR FORMULA].

1.7 Interpretation. Headings are for convenience only. "Including" means "including without limitation." Accounting terms have the meanings given under [GAAP / the accounting principles stated in Exhibit A], applied consistently.

2. Earn-Out Consideration

2.1 Entitlement. Subject to the terms of this Agreement, the Seller is entitled to receive the Earn-Out for each Earn-Out Year in which the applicable Performance Targets are met, calculated using the formula in **Exhibit A**.

2.2 Cap and floor. In no event will the aggregate Earn-Out exceed the Maximum Earn-Out. **[OPTIONAL: If the Performance Metric falls below the threshold for an Earn-Out Year, no Earn-Out is payable for that year.]**

2.3 Form of payment. The Earn-Out will be paid in **[CASH / a combination of cash and [EQUITY / NOTES] as set out in Exhibit A]**.

2.4 Payment timing. The Buyer will pay each undisputed Earn-Out amount within **[NUMBER, e.g. 30]** days after the Earn-Out Statement for the relevant Earn-Out Year becomes final under Section 4.

2.5 Tax treatment. Each Party is responsible for its own taxes arising from the Earn-Out. The Parties will treat the Earn-Out for tax purposes as **[CHOOSE: an adjustment to the purchase price / as otherwise advised by their tax advisors]**, and nothing in this Agreement is tax advice.

3. Calculation and Reporting

3.1 Preparation of Earn-Out Statement. Within **[NUMBER, e.g. 60]** days after the end of each Earn-Out Year, the Buyer will prepare and deliver to the Seller an Earn-Out Statement showing the Performance Metric, the application of the Performance Targets, and the resulting Earn-Out amount, with reasonable supporting detail.

3.2 Accounting consistency. The Performance Metric will be calculated in accordance with the accounting policies and definitions in **Exhibit A**, applied consistently throughout the Earn-Out Period. Changes in accounting methodology that would affect the Performance Metric will be disregarded unless the Parties agree in writing.

3.3 Books and records. During the Earn-Out Period and for **[NUMBER, e.g. 12]** months after, the Buyer will maintain books and records sufficient to verify the Performance Metric and will provide the Seller reasonable access to them, subject to confidentiality, for the purpose of reviewing an Earn-Out Statement.

4. Review and Dispute Resolution

4.1 Review period. The Seller has **[NUMBER, e.g. 30]** days after receiving an Earn-Out Statement to review it and to deliver a written objection describing any disputed item and the basis for the objection (the "**Objection Notice**"). If the Seller does not deliver an Objection Notice within that period, the Earn-Out Statement becomes final and binding.

4.2 Good-faith resolution. If the Seller delivers an Objection Notice, the Parties will work in good faith for **[NUMBER, e.g. 20]** days to resolve the disputed items. Amounts not in dispute will be paid when otherwise due.

4.3 Independent accountant. If the Parties cannot resolve a dispute, either Party may submit the remaining disputed items to an independent accounting firm mutually agreed by the Parties (the "**Independent Accountant**"), whose determination, made within **[NUMBER, e.g. 30]** days and limited to the disputed items, is final and binding absent manifest error. The Independent Accountant's fees will be allocated **[CHOOSE: equally / in proportion to the amounts in dispute decided against each Party]**.

4.4 Finality. Once an Earn-Out Statement is final under this Section, the Buyer will pay any resulting undisputed amount under Section 2.4.

5. Operation of the Business During the Earn-Out

5.1 **Buyer control.** Subject to this Section, the Buyer controls the operation of the Business after closing and may operate it in its business judgment.

5.2 **Good-faith covenant.** During the Earn-Out Period, the Buyer will not take any action in bad faith with the principal purpose of reducing or avoiding the Earn-Out, and will **[CHOOSE / EDIT: operate the Business in the ordinary course consistent with past practice / provide reasonable resources and support to give the Business a fair opportunity to achieve the Performance Targets]**.

5.3 **Specified protections.** Without the Seller's prior written consent (not to be unreasonably withheld), during the Earn-Out Period the Buyer will not **[CHOOSE / EDIT: discontinue a key product line of the Business; reallocate the Business's revenue to an affiliate at non-arm's-length terms; or make a material change to the methodology used to measure the Performance Metric]**.

5.4 **No guarantee of results.** Except for the express covenants in this Section, the Buyer makes no representation that any Performance Target will be achieved, and the Buyer is not required to operate the Business to maximize the Earn-Out at the expense of its reasonable business interests.

5.5 **Acceleration on change of control.** **[OPTIONAL: If the Buyer sells the Business or undergoes a change of control during the Earn-Out Period, the unpaid Earn-Out will [accelerate and become payable at [AMOUNT/FORMULA] / continue with the successor bound by this Agreement], as set out in Exhibit A.]**

6. Representations and Warranties

6.1 **Mutual.** Each Party represents and warrants that it has full power and authority to enter into and perform this Agreement, that this Agreement is duly authorized and binding on it, and that entering into it does not breach any law or agreement to which it is bound.

6.2 **By the Buyer.** The Buyer represents that it has the financial capacity to pay the Earn-Out amounts as and when they become due under this Agreement.

6.3 **No additional reliance.** Each Party acknowledges that the Earn-Out is contingent and speculative, and that it has not relied on any projection or estimate of future performance not expressly stated in this Agreement or the Purchase Agreement.

7. Confidentiality

7.1 **Obligation.** Each Party will keep confidential the terms of this Agreement and any non-public financial or operational information of the Business learned in connection with it, using at least reasonable care, and will use such information only to administer the Earn-Out.

7.2 **Permitted disclosures.** A Party may disclose such information to its advisors, lenders, insurers, and the Independent Accountant who are bound by confidentiality obligations at least as protective as these, and to the extent required by law or court order.

8. General Provisions

8.1 **Relationship to Purchase Agreement.** This Agreement supplements the Purchase Agreement. If a conflict exists, the Purchase Agreement controls unless this Agreement expressly states that it overrides a specific provision.

8.2 **Governing law and venue.** This Agreement is governed by the laws of the State of **[STATE]**, without regard to its conflict-of-laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts located in **[COUNTY, STATE]**.

8.3 No setoff except as stated. The Buyer may set off against an Earn-Out payment only amounts that are finally determined to be owed by the Seller under the Purchase Agreement, and only to the extent the Purchase Agreement permits setoff.

8.4 Assignment. Neither Party may assign this Agreement without the other's prior written consent, except that the Buyer may assign it to a successor in a merger or sale of substantially all assets that assumes the Buyer's obligations in writing.

8.5 Entire agreement; amendment. This Agreement, with its Exhibits and the Purchase Agreement, is the entire agreement between the Parties on its subject and may be amended only by a writing signed by both Parties.

8.6 Severability and waiver. If any provision is unenforceable, the rest remains in effect. A Party's failure to enforce a provision is not a waiver.

8.7 Notices. Notices must be in writing and sent to the addresses above (or as updated in writing) and are effective on receipt.

8.8 Counterparts and electronic signature. This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BUYER

SELLER

Signature: _____

Signature: _____

Printed name: **[NAME]**

Printed name: **[NAME]**

Title: **[TITLE]**

Title: **[TITLE OR N/A]**

Date: _____

Date: _____

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