

14034 South 145 East, Suite 300

Draper, UT 84020

(801) 997-5808

Date

Firm Name

Attn:

Address

Address

City, State zip code

Re: Introduction and Fee Agreement

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

This letter (“Agreement”) acknowledges that you (“Introducer”) have brought \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that is owned by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and headquartered in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Target”) to the attention of Tower Arch Capital, L.P., a Delaware limited partnership (“Tower Arch”) as a potential acquisition candidate for one of Tower Arch’s private equity funds (through one or more affiliated entities) (such affiliated entity(ies), the “Purchaser”). Introducer and Purchaser are each a “Party” and collectively the “Parties”. No fee will be due or payable to the extent Tower Arch or any of its affiliates (including Purchaser) has previously been introduced to Target and advises you of such introduction within seven (7) days of Purchaser signing this Agreement.

If Introducer provides a Qualified Referral (as defined below) of a Target to Purchaser that results in a consummated Transaction during the term of this Agreement, Introducer will be entitled to receive from Purchaser either a Platform Referral Fee, in the event the Target has achieved at least $5.0 million of EBITDA on a trailing twelve month basis at the time of closing of the Transaction, or an Add-on Referral Fee, in the event the trailing twelve month EBITDA of the Target is less than $5 million as of the closing of the Transaction. In no event will any Transaction result in a payment of both a Platform Referral Fee and an Add-on Referral Fee.

In the event a “Platform Referral Fee” is payable in connection with a Transaction, such fee shall be paid in cash at closing of the Transaction and shall be calculated as follows:

5% of the Aggregate Consideration (as defined below) between $0 and $1,000,000;

4% of the Aggregate Consideration between $1,000,001 and $2,000,000;

3% of the Aggregate Consideration between $2,000,001 and $3,000,000;

2% of the Aggregate Consideration between $3,000,001 and $4,000,000; and

1% of the Aggregate Consideration above $4,000,000.

In the event an “Add-on Referral Fee” is payable in connection with a Transaction, such fee shall be paid in cash at closing of the Transaction and shall be calculated as follows:

5% of the Aggregate Consideration (as defined below) between $0 and $1,000,000;

4% of the Aggregate Consideration between $1,000,001 and $2,000,000;

3% of the Aggregate Consideration between $2,000,001 and $3,000,000;

2% of the Aggregate Consideration between $3,000,001 and $4,000,000; and

1% of the Aggregate Consideration above $4,000,000.

Notwithstanding anything to the contrary in the forgoing, Introducer acknowledges and agrees that if, in the course of the Transaction and after a Qualified Referral is made, a sell-side broker, consultant, advisor, or intermediary is engaged, retained, or a competitive buyer search or auction process is initiated in connection with the Transaction, as determined by the Purchaser in its reasonable discretion, the Platform Referral Fee and/or the Add-on Referral Fee that would otherwise be payable shall be reduced to one-half of one percent (.5%) of the Aggregate Consideration. No referral fee of any kind shall be payable to Introducer if a sell-side broker, consultant, advisor, or intermediary has been engaged or retained, or a competitive search or auction process has been initiated prior to the referral being made. Introducer also acknowledges and agrees that Purchaser will be responsible only for the payment outlined above to Introducer with respect to said Transaction. To the extent any other Party with whom Introducer is associated makes any claim for a buy-side broker’s or finder’s fee related to the Transaction or Target, Introducer will be solely responsible for such payment(s) and/or resolving such disagreement with said third party.

For purposes of this Agreement, the term “Transaction” means that any acquisition, merger, consolidation, reorganization, recapitalization, business combination or other transaction pursuant to which Purchaser acquires its initial interest in a Target.

For purposes of this Agreement, the term “Qualified Referral” means a referral for which each of the following is true: (1) the referral in one in which Purchaser has had at least 7 calendar days to run a conflicts check and such conflicts check results in no conflict with another Introducer or broker or that would otherwise prohibit Purchaser from consummating the Transaction; (2) the referral is provided during the term of this Agreement; (3) the referral is to a Target with which Introducer has a direct and established relationship; (4) the referral is one in which Introducer introduces Purchaser to the ownership or management and Purchaser either meets in person or has a call with the ownership or management; (5) the referral is to a Target that expresses interest in a Transaction; (6) the referral is one in which the Purchaser is able to verify the Target’s EBITDA; and (7) the referral is for a Transaction in which no sell-side broker, consultant, advisor, or intermediary has been engaged or retained, and no competitive search or auction process has been initiated.

For purposes of this Agreement in determining a Platform Referral Fee or Add-on Referral Fee, the term “Aggregate Consideration” means the net amount paid by Purchaser to the Target or its shareholders for the Purchaser’s interest in the Target, as determined by the Purchaser in its good-faith discretion. Without limiting the Purchaser’s discretion as set forth in the prior sentence, it is anticipated that the Aggregate Consideration would include any amount paid for the Purchaser’s interest, including, without duplication, cash, assets, securities, promissory notes, earn-outs, and other deferred payments. If an earn-out payment or other deferred or contingent compensation arrangement is part of the Aggregate Consideration, then the Platform Referral Fee or Add-on Fee associated with the earn-out consideration shall only be paid at the same time and in the same form as the Seller receives the deferred or contingent compensation, if ever.

Please note that “Aggregate Consideration” will not include consideration described above for which a corresponding liability exists. For example, to the extent “Aggregate Consideration” is increased to “gross up” the tax benefit of doing an asset purchase as opposed to a stock purchase, this increase will not be counted in the calculation of Aggregate Consideration. Aggregate Consideration will not include the working capital left in the business or any adjustments to working capital.

This Agreement shall automatically terminate and be of no further force and effect one year from the date hereof; provided, however, that each Party hereto may terminate this Agreement upon ten (10) days’ notice to the other. To the extent Purchaser terminates this Agreement prior to the one-year anniversary hereof and a Transaction is consummated by Purchaser with Target prior to the one-year anniversary for which a Qualified Referral was given, Introducer will be entitled to receive the Platform Referral Fee or Add-on Referral Fee in accordance with the terms set forth herein.

Notwithstanding anything to the contrary in this Agreement, Platform Referral Fees, Add-on Referral Fees and Additional Incentives shall be payable only to the extent permitted by applicable federal, state and local laws as in effect from time to time as reasonably determined by Purchaser, and payments of such amounts shall be void where prohibited. As a condition precedent to receiving remuneration, Introducer: (a) may be required to execute such agreements as may be required by the provider of such remuneration to prove compliance with law with respect to the payment of such remuneration or otherwise; and (b) shall be deemed to have represented and warranted to the provider of such remuneration and its affiliates that the payment of such remuneration is so in compliance with applicable law (because the recipient is (i) a registered broker-dealer as required by the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder by the Securities and Exchange Commission (the "SEC"), (ii) is an M&A Broker, as such term is defined in that certain SEC No-Action Letter dated January 31, 2014 re: M&A Brokers (the "Broker Letter") and will satisfy all of the requirements set forth in the Broker Letter and otherwise to avoid enforcement by the SEC in connection to his, her or its failure to register with the SEC as a broker-dealer or (iii) has a valid exemption from registering as a broker-dealer with the SEC.).

This Agreement and the performance hereunder shall be governed by the laws of the State of Utah without reference to the conflicts of law principles thereof. Any disputes arising hereunder shall be settled through an arbitration proceeding in the State of Utah, County of Salt Lake, Salt Lake City in accordance with the rules of the American Arbitration Association, and no Party hereto shall be entitled to special, punitive or consequential damages. Nothing herein contained shall be deemed to create a joint venture or partnership relationship between the Parties hereto. Introducer acknowledges and agrees Purchaser does not have any obligation to pursue a Transaction, and that no obligation to pay a Platform Referral Fee or Add-on Referral Fee, as the case may be, or any other fee exists until definitive documentation is entered into by Purchaser and Target and thereafter consummated within the time period specified in this Agreement. To the extent a Transaction is consummated, Introducer acknowledges Purchaser will be obligated to pay the Platform Referral Fee or Add-on Referral Fee pursuant hereto, and Introducer will not seek compensation from any shareholder of Purchaser or from their affiliates (other than Purchaser), including without limitation Tower Arch, any Tower Arch fund or any of its officers, directors or employees. Introducer agrees that Introducer will be acting on behalf of Purchaser, as its agent, and that Introducer will not take or seek to take compensation from Target or its shareholders. Notwithstanding the foregoing, neither Party shall have any power to enter into any contracts or commitments in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever. Each Party hereto represents and warrants that the terms and conditions of this Agreement do not, and will not, conflict with or violate any term and conditions of any other agreement or commitment to which it is bound (including any agreements relating to employment). Unless otherwise consented to in writing by Tower Arch, Introducer agrees to keep the terms and existence of this Agreement confidential and that it will not disclose the name of the Target to any party (other than Tower Arch) for the purpose of that party or an affiliated party potentially entering into a Transaction with the Target. The Parties agree an electronic copy of their signature shall be deemed an original and this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows.]

Please sign below to indicate your acceptance of and agreement with the foregoing and return a counterpart of this Agreement to the undersigned.

|  |  |
| --- | --- |
|  | **Sincerely,**TOWER ARCH CAPITAL, L.P.,on behalf of PurchaserBy: Name: Title:  |
| **ACCEPTED AND AGREED:**By: Name: Title: Acceptance Date:  |  |