

AGREEMENT AND PLAN OF MERGER

dated as of

July 8, 2020

by and among

PERFORCE SOFTWARE, INC.

METHODICS HOLDINGS, INC.

AND

WC ACQUISITION SUB, INC.,

AND

**Fergus Slorach, solely in
his capacity as the Representative**

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AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (this “Agreement”), dated as of July 8, 2020, is entered into by and among (i) **PERFORCE SOFTWARE, INC.**, a Delaware corporation (“Parent”), (ii) **METHODICS HOLDINGS, INC.**, a Delaware corporation (the “Company”), and (iii) **WC ACQUISITION SUB, INC.**, a Delaware corporation (“Merger Sub”), and Fergus Slorach, solely in his capacity as the representative for the Company’s stockholders (the “Representative”).

WITNESSETH:

WHEREAS, the Group Companies are engaged in the business of providing integrated circuit-related intellectual property lifecycle management, integrated circuit design data management, and/or integrated circuit design verification traceability solutions (the “Business”);

WHEREAS, at the Closing, the parties hereto desire that, pursuant to the terms and subject to the conditions set forth herein, Merger Sub merge with and into the Company, with the Company surviving the merger as a wholly-owned subsidiary of Parent;

WHEREAS, the boards of directors of the Company, the Parent and Merger Sub have each (i) determined that the Merger is in the best interests of their respective companies and stockholders, and (ii) approved this Agreement and the transactions contemplated hereby, including the Merger, upon the terms and subject to the conditions set forth herein; and

WHEREAS, the boards of directors of the Company and Merger Sub have each determined to recommend to such entity’s stockholders the approval and adoption of this Agreement and the transactions contemplated hereby, including the Merger.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01 Definitions. The following terms, as used herein, have the following meanings:

“Additional Merger Consideration” means, as of any date of determination, without duplication, any purchase price adjustments arising under Section 2.08 payable to the Securityholders.

“Adjustment Time” means 12:01 a.m. in Los Angeles, California on the Closing Date.

“Advisor Agreement” means that certain Advisor Agreement dated as of August 15, 2017, by and between the Company and James Hogan.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise or (ii) any Person owning or controlling 50% or more of the outstanding voting securities of such other Person.

“Allocation Schedule” means Exhibit A attached hereto.

“Ancillary Agreements” means the Restrictive Covenant Agreements, the Paying Agent Agreement and all other agreements and certificates executed and delivered by or on behalf of the Company, the Representative, any officers of the Company or any of its Subsidiaries in their capacity as such, or any Securityholder in connection with this Agreement or any of the foregoing or any transactions contemplated hereby or thereby.

“Applicable Law” means, with respect to any Person, any supranational, foreign, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“Base Purchase Price” means \$35,000,000.

“Business Day” means a day, other than Saturday, Sunday or any other day on which commercial banks in Los Angeles, California are authorized or required by Applicable Law to close.

“Cash” means, without duplication (but before taking into account the consummation of the transactions contemplated hereby), all unrestricted cash and cash equivalents, marketable securities, and checks, other wire transfers and drafts deposited or available for deposit for the account of the Group Companies, as of immediately prior to the Closing (in each case determined in accordance with GAAP). For the avoidance of doubt, Cash will be calculated net of (i) issued but uncleared checks and drafts, (ii) the amount of any declared and unpaid dividends, distributions or other commitments to make a payment to any equityholder of the applicable Person making such commitment, (iii) cash held in third party escrow accounts and (iv) cash, the use of which by the Group Companies is subject to any restrictions or that would be treated as restricted cash on a balance sheet prepared in accordance with GAAP.

“CGCL” means the General Corporation Law of the State of California.

“Closing Merger Consideration” means (i) the Base Purchase Price, minus (ii) the amount of Estimated Indebtedness, plus (iii) the amount, if any, by which the Estimated Cash exceeds the Target Cash, minus (iv) the amount if any, by which the Estimated Cash is less than the Target Cash, plus (v) the amount, if any, by which the Estimated Closing Working Capital exceeds the Maximum Target Net Working Capital Amount, minus (vi) the amount, if any, by which the Estimated Closing Working Capital is less than the Minimum Target Net Working Capital

Amount, minus (vii) the amount of the Estimated Transaction Expenses, and minus (viii) the Holdback Amount.

“Closing Option Consideration” means, for each In-the-Money Vested Option, the amount (rounded down to the nearest whole cent) equal to (i) the amount by which the Per Share Closing Merger Consideration exceeds the exercise price per share of Common Stock underlying such In-the-Money Vested Option, multiplied by (ii) the aggregate number of shares of Common Stock underlying such In-the-Money Vested Option as of the Effective Time.

“Closing Stockholder Consideration” means the amount (rounded down to the nearest whole cent) equal to the aggregate amount payable to the Common Stockholders pursuant to Section 2.03 at the Closing.

“Closing Working Capital” means the difference of (i) Current Assets, minus (ii) Current Liabilities, determined as of the Adjustment Time in accordance with GAAP and the Reference Statement, without giving effect to any of the transactions contemplated hereby.

“Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“Common Stock” means the common stock of the Company.

“Common Stockholder” means a holder of Common Stock.

“Company Intellectual Property” means all Intellectual Property Rights that the Group Companies own or purport to own.

“Company Registered IP” means Registered IP that the Group Companies own or purport to own.

“Company Sales Tax Returns” means any Tax Returns that relate to Pre-Closing Sales Taxes that are required to be filed by the Company or any Subsidiary.

“Company Stock Plan” means the Methodics Holdings, Inc. 2012 Stock Incentive Plan.

“Contract” means any contract, agreement, indenture, note, bond, loan, instrument, lease, conditional sales contract, mortgage or other arrangement, whether written or oral.

“Conversion” means the conversion of the Company from a California corporation to a Delaware corporation, in accordance with Applicable Law, in each case (i) with such required filings to effect such conversion in form and substance reasonably satisfactory to Parent and Merger Sub and (ii) resulting in no further obligations or other liabilities on the part of any Group Company.

“Current Assets” means, as of any date of determination, the current assets of the Group Companies other than cash and cash equivalents, which current assets shall include only those assets that are listed on the Reference Statement and which would be classified as current assets under GAAP.

“Current Liabilities” means, as of any date of determination, the current liabilities of the Group Companies, which current liabilities shall include only those Liabilities that are listed on the Reference Statement and which would be classified as current Liabilities under GAAP (other than Transaction Expenses and Indebtedness) and including all short-term and long-term deferred revenue.

“Damages” means, without duplication, any loss, cost, settlement payment, award, judgement, fine, penalty, damage, injury, liability, demand, Tax, interest, fee or expense, including reasonable and documented out-of-pocket attorney’s, experts’ and consultant’s fees and expenses and other reasonable and documented out-of-pocket costs of defending, investigating and settling claims; *provided* that “Damages” shall not include exemplary and/or punitive damages, except in cases where such Damages are actually and finally awarded to a third party.

“DGCL” means the General Corporation Law of the State of Delaware.

“Employee Optionholder” means the holder of an Employee Option.

“Employee Optionholder Percentage” means, as of any applicable date of determination, the amount, expressed as a percentage, equal to the quotient of (i) the aggregate number of shares of Common Stock underlying the Options that are Employee Options, divided by (ii) the Fully Diluted Shares as of immediately prior to the Effective Time.

“Employee Options” means all Options other than Non-Employee Options.

“Environmental Laws” means any Applicable Law or any agreement with any Governmental Authority or other third party, relating to human health and safety, the environment or Hazardous Substances.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Code.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Family” means, with respect to an individual, (a) the individual’s spouse and any former spouses, (b) any other individual who is related to the individual or the individual’s spouse (or any former spouse) within the second degree and (c) any other individual who resides with such individual.

“Final Merger Consideration” means (i) the Base Purchase Price, minus (ii) the amount of Indebtedness as finally determined pursuant to Section 2.07, plus (iii) the amount, if any, by which Cash as finally determined pursuant to Section 2.07 exceeds the Target Cash, minus (iv) the amount if any, by which Cash as finally determined pursuant to Section 2.07 is less than the Target Cash plus (v) the amount, if any, by which the Closing Working Capital as finally determined pursuant to Section 2.07 exceeds the Maximum Target Net Working Capital Amount, minus (vi)

the amount, if any, by which the Closing Working Capital as finally determined pursuant to Section 2.07 is less than the Minimum Target Net Working Capital Amount, minus (vii) the amount of the Transaction Expenses as finally determined pursuant to Section 2.07, and minus (viii) the Holdback Amount.

“Fraud” means actual, intentional common law fraud under the laws of the State of Delaware as in effect as of the date hereof, in the making of any representation or warranty by a Person in Article 3 or Article 4 of this Agreement or in any Ancillary Agreement. For the avoidance of doubt, the term “Fraud” as used in this Agreement shall not include any other form of fraud, including constructive fraud, equitable fraud, promissory fraud, unfair dealings fraud, or any torts (including fraud) based on negligence or recklessness.

“Fully Diluted Shares” means, as of any applicable date of determination, the sum of (x) the aggregate number of shares of Common Stock outstanding immediately prior to the Effective Time, and (y) the aggregate number of shares of Common Stock underlying all In-the-Money Vested Options outstanding immediately prior to the Effective Time (rounded down to the nearest whole share).

“GAAP” means generally accepted accounting principles in the United States and, for the purposes of this Agreement, that follow the standards set forth in ASC 605, but not the standards set forth in ASC 606, which shall not apply.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental authority, department, court, agency or official, including any political subdivision thereof.

“Group Companies” means the Company and its Subsidiaries.

“Hardware” means any computer or computer network equipment used by or for the benefit of the Group Companies (or, where so specified, by or for the benefit of any other Person) at any time including parts of computer equipment such as firmware, screens, terminals, keyboards, disks and cabling, routers and other peripheral and associated electronic equipment, but excluding all Software.

“Hazardous Substances” means any pollutant, contaminant, waste or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material, or any substance, waste or material having any constituent elements displaying any of the foregoing characteristics, including petroleum, its derivatives, by-products and other hydrocarbons, and any substance, waste or material regulated under any Environmental Law.

“Holdback Amount” means an amount in cash equal to the sum of the Primary Holdback Amount and the IP Holdback Amount.

“Indebtedness” means, with respect to the Group Companies, without duplication, (i) the principal amount, plus any related accrued and unpaid interest, fees and prepayment premiums or penalties, of all indebtedness for borrowed money, (ii) indebtedness under a credit facility evidenced by any loan agreement, note, bond, debenture, mortgage or debt instrument or debt security, (iii) payment obligations currently due and payable under any interest rate, currency or

other hedging agreement, (iv) obligations under any performance bond or letter of credit, but only to the extent drawn or called prior to the Closing, (v) all obligations of the Group Companies owed under any leases (including, without limitation, equipment leases) that are required to be capitalized in accordance with GAAP, (vi) all unpaid compensation and severance (including the cost of any continuation of benefits coverage included therein) arising from Persons whose employment with any of the Group Companies has terminated prior to the Closing, including all obligations of the Group Companies owed in connection with the Advisor Agreement, (vii) all unfunded or unpaid deferred compensation and similar compensation, retirement benefits or pension obligations of the Group Companies, (viii) all accrued, but unpaid, compensation (including paid time off) for any Persons that are attributable to periods ending on or before the Closing Date calculated in accordance with GAAP, (ix) third party credit, to the extent required to be reflected in a balance sheet prepared in accordance with GAAP, (x) all obligations of any Group Company relating to deferred purchase price of property or services (including earn outs, installment payments and holdback amounts, but excluding any amounts set forth on the Reference Statement that are owed to third parties for goods and services received by the Group Companies but for which payment has not yet been made as of the date hereof and other trade payables accrued in the ordinary course of business), (xi) the Tax Liability Amount, (xii) any contingent Liabilities of the Group Companies, (xiii) any intercompany or related party indebtedness, accounts payables or other Liabilities between any Group Company and any Securityholder or any of their respective Related Persons or Affiliates, (xiv) any accounts payable balances over 120 days past due, (xv) any uncollected loans or advances paid to any employee of the Group Companies or any Related Person of such employee, (xvi) obligations owed to any Governmental Authority in connection with any relief programs, including but not limited to the CARES Act, and (xvii) guarantees with respect to any indebtedness of the Group Companies of a type described in clauses (i) through (xvi) above. The term “Indebtedness” will include (a) the amount required to pay, prepay, discharge, settle or otherwise retire any amount set forth in clauses (i) through (xvi) on the date in question and includes all principal, interest, fees, costs, expenses, prepayment penalties and other similar obligations owed in respect thereof, and (b) in respect of clauses (vi) through (viii) above, the employer portion of any payroll Taxes payable with respect thereto.

“Indemnified Taxes” means, without duplication, any and all Taxes (i) imposed on a Group Company, or for which a Group Company becomes liable, for any Pre-Closing Tax Period (as determined in accordance with the principles set forth in Section 6.04), *provided, however*, that this clause (i) shall not include any Taxes arising as a result of transactions outside the ordinary course of business after the Closing on the Closing Date, (ii) imposed on a Group Company (or any predecessor thereof) by reason of having been a member of an affiliated, combined, consolidated or unitary group with another Person on or prior to the Closing Date by reason of Treasury Regulations Section 1.1502-6(a) (or any analogous or similar provision of Applicable Law), (iii) of or imposed on any Person for which a Group Company is or has been liable as a transferee or successor, by contract or assumption, operation of Applicable Law, or otherwise, and (iv) any Transfer Taxes for which the Securityholders are responsible pursuant to Section 6.02; *provided* that no such Tax will constitute an Indemnified Tax to the extent such Tax was included in the calculation of Indebtedness or Transaction Expenses.

“Intellectual Property Rights” means all (i) United States and foreign patents and patent applications and disclosures relating thereto (and any patents that issue as a result of those patent applications), and any renewals, reissues, reexaminations, extensions, continuations,

continuations-in-part, divisions and substitutions relating to any of the patents and patent applications, as well as all related foreign patents and patent applications that are counterparts to such patents and patent applications, and any other national and multinational statutory invention registrations and disclosures relating thereto; (ii) United States and foreign trademarks, trade names, service marks, service names, trade dress, logos, slogans, toll-free numbers, and corporate names, whether registered or unregistered, and the goodwill associated therewith, together with any registrations and applications for registration thereof; (iii) rights in works of authorship, including any United States and foreign copyrights and rights under copyrights, whether registered or unregistered, including moral rights, and any registrations and applications for registration thereof; (iv) United States and foreign mask work rights or equivalents, and registrations and applications for registration thereof; (v) rights in databases and data collections (including knowledge databases, customer lists and customer databases) under the laws of the United States or any other jurisdiction, whether registered or unregistered, and any applications for registration therefor; (vi) trade secrets and other rights in know-how and confidential or proprietary information (including such rights in any business plans, designs, technical data, financial information, pricing and cost information, bills of material, or other similar information); (vii) URL and domain name registrations; (viii) rights in inventions (whether or not patentable) and improvements thereto; (ix) claims and causes of action arising out of or related to infringement or misappropriation of any of the foregoing; and (x) other proprietary or intellectual property rights recognized in any jurisdiction worldwide.

“IP Claim” means a claim for indemnification pursuant to Article 7 by any Parent Indemnified Party with respect to an alleged breach of the representations and warranties set forth in Section 3.13(c), Section 3.13(e) or Section 3.13(i).

“IP Holdback Amount” means an amount in cash equal to \$1,750,000.

“IRS” means the United States Internal Revenue Service.

“IT Systems” means Hardware and Software currently used to operate the Business.

“Knowledge” means, when used with respect to (i) Parent, the actual knowledge of Mark Ties, Michael Goergen and Wes Fredenburg, and (ii) the Company, the actual knowledge of Simon Butler, Fergus Slorach, Peter Theunis, and Vishal Moondhra, including, in each case, the knowledge that such individuals would have after reasonable due inquiry.

“Liabilities” means all indebtedness, obligations and other liabilities of a Person required under GAAP to be accrued on the financial statements of such Person.

“Licensed Intellectual Property” means all Intellectual Property Rights owned by a third party and licensed or sublicensed to the Group Companies.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset. For the purposes of this Agreement, a Person shall be deemed to own, subject to a Lien, any property or asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

“Material Adverse Effect” means any result, occurrence, fact, change, event or effect, individually or in the aggregate, that has had, or would reasonably be expected to have, a material adverse effect on (i) the condition (financial or otherwise), business, assets, Liabilities, capitalization or results of operations of the Group Companies, taken as a whole or (ii) the ability of the Company to consummate the transactions contemplated by this Agreement at all or without material delay; *provided* that in determining whether a Material Adverse Effect has occurred under the foregoing clause (i), any result, occurrence, fact, change, event or effect resulting directly or indirectly from the following shall be excluded: (a) an event or series of events affecting the United States or global economy generally or capital, credit or financial markets generally, (b) acts of war, sabotage, terrorism or military actions, including the commencement, continuation or escalation thereof, hurricanes, pandemics, earthquakes, floods, tsunamis, tornadoes, mudslides, wild fires or other natural disasters and other force majeure events, (c) political conditions generally affecting the Group Companies and industries in which the Group Companies generally operate, (d) actual adoption of or changes in Applicable Laws or accounting regulations or principles (including GAAP), or actual changes in interpretation thereof, (e) any failure by the Group Companies to meet any internal or published projections, forecasts or revenue or earnings predictions for any period (*provided* that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded), (f) action(s) approved, consented to or requested in writing by Parent, (g) the taking of any action expressly required by this Agreement or any of Ancillary Agreements, or the failure to take any action prohibited by this Agreement or any of the Ancillary Agreements or (h) any public announcement of the transactions contemplated in this Agreement, or the pendency or consummation of such transactions or this Agreement; except, in the case of clauses (a) through (d), to the extent that such event, change, circumstance, effect or other matter adversely affects the Group Companies in a disproportionate manner relative to other Persons.

“Maximum Target Net Working Capital Amount” means an amount equal to negative \$4,847,543.

“Merger Consideration” means, collectively, the Common Stock Merger Consideration and the Option Consideration.

“Minimum Target Net Working Capital Amount” means an amount equal to negative \$5,147,543.

“Neutral Arbiter” means Deloitte LLP, or such other independent accounting firm as the Company and Parent mutually agree in writing.

“NinePlusIT Dispute” has the meaning set forth in Schedule 3.10.

“Non-Employee Optionholder” means the holder of a Non-Employee Option.

“Non-Employee Options” means Options for which the Group Companies have no Tax withholding obligations.

“Off-the-Shelf Software License” means any written license agreement (including a shrink-wrap or click-through license agreement, but excluding an Open Source License) licensing a Group Company to use only unmodified Software that is generally available to the public through

retail stores or commercial distribution channels, for which such Group Company has not paid, or been obligated to pay, fees of more than \$25,000 in any year.

“Open Source License” means any open-source, copyleft, or similar license (such as the GPL, Apache, MIT or BSD licenses) applicable to any Software or other Technology.

“Option Consideration” means, for each In-the-Money Vested Option, the amount equal to the sum of (i) the Closing Option Consideration applicable to such In-the-Money Vested Option, plus (ii) the product of (A) the Per Share Additional Merger Consideration, multiplied by (B) the aggregate number of shares of Common Stock underlying such In-the-Money Vested Option, as of the applicable date of determination, plus (iii) the product of (A) the Per Share Earnout Amount, multiplied by (B) the aggregate number of shares of Common Stock underlying such In-the-Money Vested Option, as of the applicable date of determination, plus (iv) the product of (A) the Per Share Unused Primary Holdback Amount, multiplied by (B) the aggregate number of shares of Common Stock underlying such In-the-Money Vested Option, as of the applicable date of determination, plus (v) the product of (A) the Per Share Unused IP Holdback Amount, multiplied by (B) the aggregate number of shares of Common Stock underlying such In-the-Money Vested Option, as of the applicable date of determination.

“Optionholder” means the holder of an Option.

“Options” means, as of the date of this Agreement, an outstanding and unexercised option to purchase shares of Common Stock.

“Parent Indemnified Party” means Parent, its Affiliates, directors, officers, agents, employees, representatives and their respective successors and assignees.

“Paying Agent” means PNC Bank.

“Paying Agent Agreement” means that certain paying agent agreement, entered into at or prior to the Closing Date, among the Paying Agent, Parent and the Representative.

“Per Share Additional Merger Consideration” means the amount equal to the quotient obtained by dividing (i) the Additional Merger Consideration by (ii) the Fully Diluted Shares.

“Per Share Closing Merger Consideration” means, as of the applicable date of determination, the amount equal to the quotient obtained by dividing (i) (x) the Closing Merger Consideration plus (y) the product of (A) the exercise price of each In-the-Money Vested Option multiplied by (B) the number of shares of Common Stock underlying each such In-the-Money Vested Option, by (ii) the Fully Diluted Shares.

“Per Share Earnout Amount” means the amount equal to the quotient obtained by dividing (i) the Earnout Amount paid to the Securityholders pursuant to Section 2.09, by (ii) the Fully Diluted Shares.

“Per Share Unused IP Holdback Amount” means the amount equal to the quotient obtained by dividing (i) the portion of the IP Holdback Amount released to the Securityholders pursuant to Section 7.07, by (ii) the Fully Diluted Shares.

“Per Share Unused Primary Holdback Amount” means the amount equal to the quotient obtained by dividing (i) the portion of the Primary Holdback Amount released to the Securityholders pursuant to Section 7.07, by (ii) the Fully Diluted Shares.

“Permitted Liens” means (a) Liens disclosed on the Current Balance Sheet, (b) Liens for Taxes or governmental assessments, charges or claims (i) the payment of which is not yet due and payable or (ii) that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (c) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and other similar Persons and other Liens imposed by Applicable Law incurred in the ordinary course of business for sums not yet delinquent or immaterial in amount or are being contested in good faith, provided adequate reserves in accordance with GAAP have been established, (d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations or (e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business and which do not exceed \$15,000.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

“Personal Data” means any and all information (including: (a) first and last name, (b) home address, (c) Internet Protocol address, (d) email address, (e) geographic location, (f) health or diet information, (g) family members, (h) political beliefs, (i) group memberships, (j) his or her social security number or other personal identification number, (k) account numbers, (l) internet browsing history, (m) internet purchase history and (n) persistent identifier, such as a customer number held in a “cookie” or processor serial number) that, alone or in combination with other information processed by the Group Companies, identifies or is associated with an identified natural person.

“Pre-Closing Sales Taxes” means all liabilities for sales, use or other similar Taxes imposed on or incurred by the Group Companies with respect to any Pre-Closing Tax Period, including but not limited to liabilities arising from or in connection with the failure of any Group Company to file any Tax Returns relating to such Taxes, and any interest, penalty or addition thereto, whether disputed or not.

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date and the portion of any Straddle Period ending on or before the Closing Date.

“Primary Holdback Amount” means an amount in cash equal to \$1,750,000.

“Privacy and Security Laws” means Applicable Laws regarding collecting, accessing, using, disclosing, electronically transmitting, securing, sharing, transferring and storing Personal Data or other tracking of consumer behaviors, including federal, state or foreign laws or regulations regarding (a) data privacy and information security, (b) data breach notification (as applicable), (c) unfair or deceptive practices and (d) trespass, computer crime and other Applicable Laws governing unauthorized access to or use of electronic data.

“Pro Rata Share” means, with respect to any Securityholder as of the applicable date of determination, the quotient (expressed as a percentage) obtained by dividing (a) the sum of (i) the number of shares of Common Stock held by such Securityholder immediately prior to the Effective Time, and (ii) the number of shares of Common Stock underlying any In-the-Money Vested Options held by such Securityholder as of immediately prior to the Effective Time by (b) the Fully Diluted Shares as of immediately prior to the Effective Time. Each Securityholder’s Pro Rata Share shall be as set forth on the Allocation Schedule.

“Property Taxes” means all real property Taxes, personal property Taxes and similar ad valorem Taxes.

“Registered IP” means all Intellectual Property Rights that are registered, filed or issued under the authority of any Governmental Authority or private registrar, including all patents, registered copyrights, registered trademarks and domain names and all applications for any of the foregoing.

“Related Person” means (a) with respect to any Person that is not an individual, (i) any Affiliate of such Person, (ii) any Person that serves as a director, officer, partner, executor, or trustee of such Person or an Affiliate of such Person (or in any other similar capacity), (iii) any Person with respect to which such Person or an Affiliate of such Person serves as a general partner or trustee (or in any other similar capacity), (iv) any Person that has direct or indirect beneficial ownership of voting securities or other voting interests representing at least five percent (5%) of the outstanding voting power or equity securities or other equity interests representing at least five percent (5%) of the outstanding equity interests (a “Material Interest”) in such Person and (v) any Person in which such Person or an Affiliate of such Person holds a Material Interest and (b) with respect to any Person that is an individual (i) each other member of such individual’s Family, (ii) any Affiliate of such Person or one or more members of such Person’s Family, (iii) any Person in which such Person or members of such Person’s Family hold (individually or in the aggregate) a Material Interest and (iv) any Person with respect to which such Person or one or more members of such Person’s Family serves as a director, officer, partner, executor, or trustee (or in any other similar capacity).

“Restrictive Covenant Agreements” shall mean those certain Restrictive Covenant Agreements to be entered into between Parent and each of Simon Butler and Fergus Slorach.

“Section 280G” means Section 280G of the Code and the United States Treasury Regulations and related guidance promulgated thereunder.

“Section 280G Payments” means any and all payments and/or benefits provided pursuant to Employee Plans, other Contracts or otherwise that might result, separately or in the aggregate, in the payment of any amount and/or the provision of any benefit that would not be deductible by reason of 280G or that would be subject to an excise tax under Section 4999 of the Code.

“Securityholder Claims” means any claims by any Securityholder regarding or arising out of the transactions contemplated herein and any claims, actions, litigation, complaints, exercise of appraisal rights or otherwise arising out of breaches of fiduciary duties or similar duties pursuant to the organizational documents of the Group Companies.

“Securityholder Indemnified Party” means the Securityholders and their respective Affiliates, officers, directors, managers, employees and representatives and their respective successors and assignees.

“Securityholders” means, collectively, the Common Stockholders and the Optionholders.

“Shareholder Approval” means the approval and adoption of the Merger and this Agreement by the requisite affirmative vote (or written consent) of the stockholders of the Company in accordance with the DGCL and the organizational documents of the Company.

“Software” means any computer program, operating system, applications system, firmware or software code of any nature, whether operational, under development or inactive, including all object code, source code, data files, rules, definitions or methodology derived from the foregoing and any derivations, updates, enhancements and customization of any of the foregoing, processes, know-how, operating procedures, methods, technical manuals, user manuals and other documentation thereof, whether in machine-readable form, programming language or any other language or symbols and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature.

“Solvent” means, with respect to any Person, that as of the date of determination, both (a) (i) the sum of such Person’s debts (including contingent liabilities) does not exceed the present fair saleable value of such Person’s present assets, (ii) such Person’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date or with respect to any transaction contemplated to be undertaken after the Closing Date, and (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it shall incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (b) such Person is “solvent” within the meaning given that term and similar terms under bankruptcy, insolvency or other Applicable Laws affecting the enforcement of creditors’ rights, and Applicable Laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Straddle Period” means any taxable period that includes (but does not end on) the Closing Date.

“Subsidiary” means, with respect to any Person, any entity of which units, securities or other ownership interests having ordinary voting power to elect a majority of the board of directors, board of managers or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“Target Cash” means \$3,500,000.

“Target Net Working Capital Amount” means negative \$4,977,543.

“Tax Liability Amount” means, without duplication, an amount equal to the sum of (a) any amounts that would be properly accrued as current liabilities for Taxes on the consolidated balance sheet of the Group Companies as of the Closing Date in accordance with GAAP and (b) any amount that would be properly reserved under ASC 740 and ASC 450 on the consolidated balance sheet of the Group Companies as of the Closing Date in accordance with GAAP, in each case, (i) shall be calculated as if the taxable year of each Subsidiary of the Company that is a “controlled foreign corporation” within the meaning of Section 957(a) of the Code ended at the close of business on the Closing Date, (ii) shall disregard any election pursuant to Section 965(h) of the Code, (iii) shall be calculated by including in taxable income all adjustments made pursuant to Section 481(a) of the Code (or any analogous or similar provision of Applicable Law) on or prior to the Closing date that will not previously have been included in income by any Group Company, and (iv) for the avoidance of doubt, shall in no event be less than zero and shall not include any offers or reductions with respect to Tax refunds or overpayments of Tax.

“Tax Return” means any report, declaration, return, information return, claim for refund, or statement relating to Taxes, including any transfer pricing reports, schedule or attachment thereto and any amendments thereof.

“Tax Sharing Agreements” means all existing agreements or arrangements (whether or not written) binding a Group Company that provide for the allocation, apportionment, sharing or assignment of any Tax liability or benefit, or the transfer or assignment of income, revenues, receipts or gains for the purpose of determining any Person’s Tax liability.

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, escheat and unclaimed property obligations, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, ad valorem, value added, goods and services, alternative or add-on minimum or estimated tax or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

“Taxing Authority” means any Governmental Authority responsible for the administration or collection of any Taxes.

“Technology” means tangible embodiments of Intellectual Property Rights, whether in electronic, written or other media, including diagrams, inventions (whether or not patentable), invention disclosures, know-how, methods, network configurations and architectures, proprietary information, protocols, schematics, design information, bills of material, specifications, technical data, Software (in any form, including source code and executable or object code), build scripts, test scripts, algorithms, APIs, subroutines, techniques, user interfaces, URLs, website content, works of authorship, documentation (including instruction manuals, samples, studies and summaries), databases and data collections.

“Transaction Expenses” means the aggregate amount of all expenses, including (a) all third-party legal, accounting, financial advisory, consulting or other fees and expenses of the Group Companies or the Securityholders that would be payable by the Group Companies (whether before or after the Effective Time), (b) all transaction bonuses, retention, severance and similar

payments and obligations paid to Group Company employees, consultants, independent contractors or directors of the Group Companies and incurred in connection with the transactions contemplated by this Agreement, including the employer portion of any employment or payroll Taxes payable with respect to the Transaction Expenses; *provided* that severance obligations incurred in connection with the termination at or after the Effective Time of an employee, consultant, independent contractor or director of the Group Companies resulting from Parent's personnel decisions shall not be included in this definition of "Transaction Expenses", (c) the employer portion of all deferred employment or payroll Taxes, and (d) the employer portion of all employment or payroll Taxes or similar amounts owed or imposed on any Group Company as a result of, or with respect or attributable to, any of the transactions contemplated by this Agreement, including in connection with any exercise or cancellation of an Option at or around the Effective Time.

"Transaction Tax Deductions" means any Tax deductions relating to (i) the Transaction Expenses, (ii) payment of the Option Consideration, and (iii) the satisfaction of Indebtedness at Closing, including any unamortized deferred financing fees in connection with the Indebtedness.

(a) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
ACA	Section 3.20(k)
ACV Threshold	Section 2.09(a)
Agreement	Preamble
Annual Contract Value	Section 2.09(a)
Audited Financial Statements	Section 3.06
Balance Sheet Date	Section 3.06(a)
Business	Recitals
CARES Act	Section 3.23(c)
Certificate of Merger	Section 2.01(b)
Claim Certificate	Section 7.04(a)
Claim Dispute Notice	Section 7.04(b)
Closing	Section 2.12(a)
Closing Date	Section 2.12(a)
Closing Statement	Section 2.07(a)
Common Stock Merger Consideration	Section 2.03(a)
Company	Preamble
Company Products	Section 3.13(a)
Company Financial Statements	Section 3.06(a)
Company Fundamental Representations	Section 7.01
Company Privacy Policies	Section 3.13(p)(iv)
Current Balance Sheet	Section 3.06(a)
D&O Indemnified Party(ies)	Section 5.06(a)
Deductible	Section 7.03(b)
Disclosure Schedules	Article 3
Dispute Notice	Section 2.07(b)
Dissenting Shareholders	Section 2.11

Dissenting Shares	Section 2.11
Due Diligence Materials	Section 4.08(b)
Earnout Amount	Section 2.09(a)
Earnout Objection Notice	Section 2.09(b)
Earnout Period	Section 2.09(a)
Effective Time	Section 2.01(b)
Election Notice	Section 7.05(c)(ii)
Employee Plans	Section 3.20(a)
Estimated Cash	Section 2.06
Estimated Claim Amount	Section 7.04(a)(ii)
Estimated Closing Working Capital	Section 2.06
Estimated Indebtedness	Section 2.06
Estimated Transaction Expenses	Section 2.06
Excess Amount	Section 2.08(b)
Excluded Shares	Section 2.03(b)
Existing Indebtedness	Section 5.03
Grant Date	Section 3.05(b)
H&K Work Product	Section 9.12
Holdback Period	Section 2.10
Indemnified Party	Section 7.04(a)
Indemnifying Party	Section 7.04(a)
In-the-Money Vested Option	Section 2.04(a)
IP Holdback Period	Section 2.10
Key Employees	Section 5.05
Law Firm	Section 9.12
Leased Real Property	Section 3.12(c)
Leased Real Property Leases	Section 3.12(c)
Letter of Transmittal	Section 2.05
Major Customers	Section 3.24(a)
Major Vendors	Section 3.24(b)
Malicious Code	Section 3.13(k)
Material Contract(s)	Section 3.09(a)
Merger	Section 2.01(a)
Option Cancellation Agreement	Section 2.04(b)
Parent Fundamental Representations	Section 7.01
Parent Prepared Return	Section 6.01
Permits	Section 3.16
Pre-Closing Statement	Section 2.06
Primary Holdback Period	Section 2.10
Quarterly Statement	Section 2.09(b)
Recovered Amount	Section 7.03(d)
Reference Statement	Section 2.14
Representative Losses	Section 9.11(e)
Retention Agreements	Section 5.05
Security Policies	Section 3.13(p)(i)
SH Confidential Information	Section 9.12

Shortfall Amount	Section 2.08
Surviving Company	Section 2.01(a)
Tax Proceeding	Section 6.05(a)
Third Party Claim	Section 7.05
Transfer Taxes	Section 6.02
Unaudited Financial Statements	Section 3.06
VDA	Section 6.11
Written Consents	Section 8.01(b)(i)

Section 1.02 Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule, but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; *provided* that with respect to any agreement or contract listed on any schedules hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law,” “laws” or to a particular statute or law shall be deemed also to include any and all Applicable Law.

ARTICLE 2 THE MERGER

Section 2.01 The Merger.

(a) Subject to the terms and conditions hereof, at the Effective Time, Merger Sub shall merge (the “Merger”) with and into the Company in accordance with the DGCL, whereupon the separate existence of Merger Sub shall cease, and the Company shall be the surviving company (the “Surviving Company”).

(b) At the Closing, the Company and Merger Sub shall cause a certificate of merger (the “Certificate of Merger”) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware and make all other filings or recordings required by the DGCL in connection with the Merger. The Merger shall become effective at such time as is specified in the

Certificate of Merger as duly filed with the Secretary of State of the State of Delaware, or at such other time as Parent and the Company shall agree and specify in the Certificate of Merger (the “Effective Time”).

(c) From and after the Effective Time, the Surviving Company shall succeed to all the assets, rights, privileges, immunities, powers and franchises and be subject to all of the Liabilities, restrictions, disabilities and duties of the Company and Merger Sub, all as provided under the DGCL.

Section 2.02 Organizational Documents; Directors and Officers. At the Effective Time, by virtue of the Merger and without any other action on the part of Parent, Merger Sub, the Company or the holders of any shares of capital stock of any of the foregoing:

(a) the certificate of incorporation of the Surviving Company shall be amended and restated in its entirety to conform to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, except that the name of the Surviving Company shall be “Methodics Holdings, Inc.”;

(b) the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be adopted as the bylaws of the Surviving Company; and

(c) the directors and officers of Merger Sub at the Effective Time shall be the directors and officers of the Surviving Company, in each case, until the earlier of their resignation, removal or death until their respective successors are duly elected or appointed and qualified in accordance with the Surviving Company’s certificate of incorporation and bylaws.

Section 2.03 Effect on Capital Stock. Upon the terms and subject to the conditions of this Agreement, and in accordance with the DGCL, at the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof:

(a) Each share of Common Stock issued and outstanding immediately prior to the Effective Time (other than Excluded Shares and Dissenting Shares) shall be converted into a right to receive an amount in cash equal to the sum of:

- (i) the Per Share Closing Merger Consideration;
- (ii) the Per Share Additional Merger Consideration;
- (iii) the Per Share Earnout Amount;
- (iv) the Per Share Unused Primary Holdback Amount; and
- (v) the Per Share Unused IP Holdback Amount;

as calculated and set forth on the Allocation Schedule. The aggregate consideration to which holders of Common Stock become entitled pursuant to this Section 2.03(a) is referred to herein as the “Common Stock Merger Consideration”.

(b) Each share of Common Stock, if any, held immediately prior to the Effective Time by the Company shall be canceled and no payment shall be made with respect thereto (“Excluded Shares”).

(c) Each share of common stock of Merger Sub that is issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) validly issued, fully paid and non-assessable share of common stock of the Surviving Company.

Section 2.04 Effect on Options.

(a) No Option shall be assumed, substituted or continued in connection with the Merger. Upon the terms and subject to the conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any further action on the part of the Company or of any Securityholder, each Option that is vested, outstanding and unexercised, and that has an exercise price less than the Per Share Closing Merger Consideration (each such vested Option, an “In-the-Money Vested Option”) shall automatically be cancelled and extinguished and converted into the right to receive the Option Consideration as calculated and set forth on the Allocation Schedule and without the payment of any interest. All Options that are outstanding, unexercised and not In-the-Money Vested Options shall immediately prior to the Effective Time automatically be extinguished and cancelled without the right to receive any consideration (with no payment being made hereunder with respect thereto).

(b) Promptly following the Closing, the Surviving Company or its designee shall provide to each Employee Optionholder (A) an option cancellation agreement in form and substance reasonably acceptable to Parent (an “Option Cancellation Agreement”), and (B) instructions for use in effecting the cancellation and termination of such Employee Optionholder’s In-the-Money Vested Options in exchange for the portion of Option Consideration contemplated to be paid to such Employee Optionholder pursuant to this Section 2.04(b). As a condition precedent to each Employee Optionholder’s right to receive his, her or its portion of the Option Consideration, if any, such Employee Optionholder shall deliver to the Surviving Company an executed Option Cancellation Agreement. Upon receipt by the Surviving Company of such Employee Optionholder’s executed Option Cancellation Agreement (but in no event earlier than the Effective Time), the Surviving Company or its designee shall pay to such Employee Optionholder, subject to Section 2.13 below, the portion of the Closing Option Consideration due with respect to the Employee Optionholder’s In-the-Money Vested Options, and the Surviving Company shall use reasonable best efforts to make such payment on the next regularly schedule payroll date following receipt from the Employee Optionholder of all required documentation. All amounts payable to an Employee Optionholder shall be paid through payroll.

(c) Prior to the Effective Time, the Company or its designee shall have provided or shall have caused the Paying Agent to provide to each Non-Employee Optionholder an Option Cancellation Agreement. As a condition precedent to each Non-Employee Optionholder’s receipt of his, her or its applicable Option Consideration, such Non-Employee Optionholder shall deliver an executed Option Cancellation Agreement to the Paying Agent. Upon receipt by the Paying Agent of such Non-Employee Optionholder’s executed Option Cancellation Agreement, such Non-Employee Optionholder shall be entitled to receive in exchange therefor, the applicable Option Consideration and the Company shall instruct the Paying Agent to pay such Option

Consideration (A) on the Closing Date if all deliveries from the applicable Non-Employee Optionholder are received by the Paying Agent at least one (1) Business Day prior to the Closing Date, or (B) otherwise within two (2) Business Days after the date of receipt by the Paying Agent of such deliveries from the applicable Non-Employee Optionholder, in each case by delivery of a check or by wire transfer. On the date set forth in the agreement with the Paying Agent, Parent shall instruct the Paying Agent to deliver to the Surviving Company any portion of the funds deposited with the Paying Agent by Parent pursuant to Section 2.05 of this Agreement that remains undistributed to the Non-Employee Optionholders. Thereafter, any Non-Employee Optionholders who have not complied with the provisions of this Agreement for receiving their portion of the Merger Consideration from the Paying Agent shall look only to the Surviving Company for such amounts, without any interest or dividends thereon.

(d) Prior to the Effective Time, the Company shall take any and all actions, including adopting appropriate board resolutions which shall be subject to the reasonable review and approval of Parent, necessary to effectuate the treatment of Options set forth in this Section 2.04 and ensure that the Option Consideration payable hereunder represents the exclusive consideration due to the holders of Options.

Section 2.05 Exchange of Company Stock; Paying Agent. Parent shall cause the Paying Agent to effect the exchange of cash for the shares of Common Stock that are outstanding as of immediately prior to the Effective Time and entitled to payment pursuant to Section 2.03. In connection with such exchange, by no later than two (2) Business Days prior to the Closing Date (unless such two (2) Business Day period is waived or shortened by the Representative), Parent shall have caused the Paying Agent to provide each holder of Common Stock with a Letter of Transmittal (a "Letter of Transmittal"). Parent shall cause the Paying Agent to hold such funds and deliver them in accordance with the terms and conditions hereof and the terms and conditions of the Paying Agent Agreement. Each holder of Common Stock outstanding as of immediately prior to the Effective Time may deliver a duly executed and completed Letter of Transmittal and, after the Effective Time, Parent shall cause the Paying Agent to promptly deliver or cause to be delivered to such holder a wire transfer in an amount equal to the amount of cash to which such holder is entitled under Section 2.03 to the accounts designated by such holder in such holder's Letter of Transmittal at such times as are required pursuant to the terms of this Agreement; *provided* that Parent shall cause the Paying Agent to deliver or cause to be delivered such amounts on the Closing Date to any holder of Common Stock that has delivered a duly executed and completed Letter of Transmittal to the Paying Agent at least one (1) Business Day prior to the Closing Date. In no event shall any holder of Common Stock who delivers a Letter of Transmittal be entitled to receive interest on any of the funds to be received in the Merger. Any Common Stock held by a holder thereof that has delivered a Letter of Transmittal to the Company pursuant to this Section 2.05 shall not be transferable on the books of the Company without Parent's prior written consent. At the Effective Time, the share transfer books of the Company shall be closed, and thereafter there shall be no further registration of transfers of Common Stock theretofore outstanding on the records of the Company. From and after the Effective Time, the holders of the shares of Common Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect thereto except as otherwise provided in this Agreement or by Applicable Law. On or after the Effective Time, any shares of Common Stock presented to the Surviving Company or Parent for any reason shall be converted into the consideration payable in respect thereof pursuant to Section 2.03 without any interest thereon. Any portion of the funds held by

the Paying Agent pursuant to this Agreement that remains undistributed to the holders of Common Stock twelve (12) months after the Effective Time shall be delivered to the Surviving Company, upon demand, and any holder of Common Stock that has not previously complied with this Section 2.05 prior to the end of such twelve (12)-month period shall thereafter look only to the Surviving Company for payment of its claim for the applicable portion of the Merger Consideration in respect of such Common Stock. Notwithstanding the foregoing, none of Parent, the Surviving Company nor their Affiliates shall be liable to any holder of Common Stock for any amount paid to any public official pursuant to applicable abandoned property, escheat, or similar laws. Any amount remaining unclaimed by holders of Common Stock three (3) years after the date on which such funds were delivered to the Paying Agent for payment (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority) shall become, to the extent permitted by Applicable Law, the property of the Surviving Company free and clear of any claims or interest of any Person previously entitled thereto. The parties hereto expressly acknowledge and agree that the receipt of the Letters of Transmittal, and the obligations therein, were expressly considered and relied upon in Parent's and Merger Sub's decisions to enter into this Agreement and pay the consideration set forth herein.

Section 2.06 Closing Calculations. At least three (3) Business Days prior to the Closing Date, the Company shall have delivered to Parent a certificate executed by the Company (the "Pre-Closing Statement"), which shall set forth, based on the books and records of the Company, (i) an estimated consolidated balance sheet of the Company as of the Adjustment Time, (ii) a good faith calculation of the Company's estimate of Cash ("Estimated Cash"), Indebtedness ("Estimated Indebtedness"), Closing Working Capital ("Estimated Closing Working Capital"), and Transaction Expenses ("Estimated Transaction Expenses"), and (iii) in accordance with the Allocation Schedule, the resulting Closing Merger Consideration, the Closing Stockholder Consideration and the Option Consideration due to Employee Optionholders and the Non-Employee Optionholders. Such Pre-Closing Statement shall be accompanied by appropriate documentation supporting the estimates contained therein. Subject to the provisions of this Section 2.06, the good faith delivery of the Pre-Closing Statement shall be conclusive for purposes of payment to be made by Parent at the Closing, but shall be subject to adjustment after the Closing in accordance with the provisions of Section 2.08. Notwithstanding anything to the contrary contained herein, no failure of Parent to object to any item or any amount of any estimate set forth in the Pre-Closing Statement will affect Parent's rights under this Article 2.

Section 2.07 Post-Closing Adjustment of Pre-Closing Statement.

(a) As promptly as practicable, but no later than ninety (90) calendar days after the Closing Date, Parent will cause to be prepared and delivered to the Representative a certificate setting forth Parent's final calculation of (i) Cash, (ii) Indebtedness, (iii) Transaction Expenses, (iv) Closing Working Capital, and (v) the resulting Closing Merger Consideration, each as of the Adjustment Time (together, the "Closing Statement"). The Closing Statement will be prepared in a manner consistent with the definitions of the terms Cash, Indebtedness, Transaction Expenses and Closing Working Capital and in accordance with GAAP and the Reference Statement. The Closing Statement will be based solely on facts and circumstances as they exist as of the Closing and will exclude the effect of any fact, event, change, circumstance, act, development or decision occurring after the Closing.

(b) If the Representative disagrees with Parent's calculation of the Closing Statement delivered pursuant to Section 2.07(a), the Representative may, within thirty (30) calendar days after delivery of the Closing Statement by Parent, deliver a notice to Parent disagreeing with such calculation and providing the Representative's calculation of such amount and specifying, in reasonable detail, the Representative's grounds for such disagreement (a "Dispute Notice"). Any Dispute Notice shall specify those items or amounts as to which the Representative disagrees, and the Representative shall be deemed to have agreed with all other items and amounts contained in the Closing Statement delivered pursuant to this Section 2.07. If a Dispute Notice is not timely delivered, the Closing Statement as delivered by Parent will be considered final, binding and non-appealable by the parties hereto.

(c) If a Dispute Notice shall be duly delivered pursuant to Section 2.07(b), Parent and the Representative shall, during the thirty (30) calendar days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Cash, Indebtedness, Transaction Expenses and Closing Working Capital (as applicable), which applicable amount shall not be less than the lowest amount thereof shown in Parent's or the Representative's calculations delivered pursuant to Section 2.07(a) or Section 2.07(b), nor more than the highest amount thereof shown in Parent's or the Representative's calculations delivered pursuant to Section 2.07(a) or Section 2.07(b). If Parent and the Representative are unable to reach such agreement during such period, they shall promptly thereafter cause the Neutral Arbiter promptly to review the disputed items or amounts for the purpose of calculating such items in dispute in accordance with the provisions of this Agreement. In making such calculation, such Neutral Arbiter shall consider only those items or amounts in Parent's calculation of disputed items as to which the Representative has disagreed. Such Neutral Arbiter shall deliver to Parent and the Representative, as promptly as practicable, a report setting forth such calculation, which shall either be consistent with the position of Parent or the position of the Representative or between the positions of Parent and the Representative. Such report shall be final and binding upon Parent and the Representative. The fees and costs of the Neutral Arbiter shall be borne by the parties based on the inverse of the percentage that the Neutral Arbiter's determination bears to the total amount of the total items in dispute as originally submitted to the Neutral Arbiter by Parent and the Representative. For example, should the items in dispute total in amount to \$1,000 and the Neutral Arbiter awards \$600 in favor of the Representative's position, sixty percent (60%) of the costs and expenses of its review would be borne by Parent and forty percent (40%) of the costs and expenses would be borne by the Representative.

(d) Parent and the Representative agree that they will, and agree to cause their respective independent accountants to, cooperate and assist in the calculation of Closing Working Capital and in the conduct of the review referred to in this Section 2.07, including making available to the extent necessary books, records, work papers and personnel.

Section 2.08 Corresponding Post-Closing Adjustment of Closing Merger Consideration.

(a) If the Final Merger Consideration is greater than the Closing Merger Consideration (such amount, the "Shortfall Amount") then, within five (5) Business Days after the determination of the Final Merger Consideration, Parent shall pay or cause to be paid to (i) the

Paying Agent for distribution to the Securityholders (other than the Employee Optionholders) based on each such Securityholder's Pro Rata Share in accordance with the Allocation Schedule, the Shortfall Amount (less the Employee Optionholder Percentage of the Shortfall Amount, and less any fees, expenses and any applicable withholding), and (ii) the Surviving Company (for distribution to the Employee Optionholders based on each such Employee Optionholder's Pro Rata Share in accordance with the Allocation Schedule) the Employee Optionholder Percentage of the Shortfall Amount (less any fees and expenses) by wire transfer of immediately available funds to an account designated in writing by the Surviving Company.

(b) If the Final Merger Consideration is less than the Closing Merger Consideration (such amount, the "Excess Amount"), then such Excess Amount shall be satisfied by set-off against the Primary Holdback Amount, and the Primary Holdback Amount shall be reduced accordingly.

Section 2.09 Earnout.

(a) Earnout Payment. Subject to the limitations and restrictions set forth in this Section 2.09, a cash payment of \$5,000,000 (the "Earnout Amount") shall become payable to the Securityholders upon the achievement of \$8,383,000 in Annual Contract Value (the "ACV Threshold") at any time during the period beginning on the Closing Date and ending on the two (2) year anniversary of the Closing Date (the "Earnout Period"). As used herein, "Annual Contract Value" shall mean the aggregate contract value of the Business of the Surviving Company calculated on a trailing twelve (12)-month basis, considering the contract value of all active contracts of the Business that commenced at any time prior to the Closing Date, as well as all active contracts commenced during the Earnout Period.

(b) Procedures Applicable to Earnout.

(i) Not later than thirty (30) days after the end of each fiscal quarter during the Earnout Period, Parent shall prepare and deliver to the Representative a statement setting forth in reasonable detail its calculation of Annual Contract Value as at the end of such calendar month (the "Quarterly Statement"). Parent shall make available to the Representative during normal business hours and following reasonable advance notice (such access not to unreasonably disrupt the operations of Parent or any of its Affiliates) all books and records maintained by Parent as the Representative may reasonably require in order for the Representative to review Parent's calculation of Annual Contract Value as set forth in the Quarterly Statement.

(ii) After every fourth (4th) Quarterly Statement delivered hereunder, the Representative shall be entitled to dispute Parent's calculation of Annual Contract Value as set forth in any of the prior four (4) such Quarterly Statements by delivering notice thereof (an "Earnout Objection Notice") to Parent in writing within ten (10) Business Days of Parent's delivery of the applicable Quarterly Statement, which Earnout Objection Notice shall provide the Representative's calculation of Annual Contract Value in respect of the disputed Quarterly Statement(s) and shall specify, in reasonable detail, the Representative's grounds

for such disagreement; *provided, however*, that notwithstanding anything to the contrary in the foregoing, in the event that the Representative reasonably and in good faith believes that the ACV Threshold has been met and has not been properly reflected by Parent in any Quarterly Statement, the Representative may deliver an Earnout Objection Notice with respect to such Quarterly Statement in accordance with this Section 2.09(b)(ii). Any Earnout Objection Notice shall specify those items or amounts as to which the Representative disagrees, and the Representative shall be deemed to have agreed with all other items and amounts contained in the applicable Quarterly Statements delivered pursuant to this Section 2.09. If an Earnout Objection Notice shall be duly delivered pursuant to this Section 2.09(b)(ii), Parent and the Representative shall, during the thirty (30) calendar days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine the Annual Contract Value, which amount shall not be less than the lowest or highest amounts thereof shown in Parent's or the Representative's calculations delivered pursuant to this Section 2.09. If Parent and the Representative are unable to reach such agreement during such period, they shall promptly thereafter cause the Neutral Arbiter promptly to review the disputed items or amounts for the purpose of calculating such items in dispute in accordance with the provisions of this Agreement. In making such calculation, such Neutral Arbiter shall consider only those items or amounts in Parent's calculation of disputed items as to which the Representative has disagreed. Such Neutral Arbiter shall deliver to Parent and the Representative, as promptly as practicable, a report setting forth such calculation, which shall either be consistent with the position of Parent or the position of the Representative or between the positions of Parent and the Representative. Such report shall be final and binding upon Parent and the Representative. The fees and costs of the Neutral Arbiter shall be borne by the parties in the same manner as provided in Section 2.07(c).

(c) Timing of Payment. No later than fifteen (15) Business Days following the delivery of the Quarterly Statement providing that the ACV Threshold has been met, Parent shall pay or cause to be paid to (i) the Paying Agent for distribution to the Securityholders (other than the Employee Optionholders) based on each such Securityholder's Pro Rata Share in accordance with the Allocation Schedule, the Earnout Amount (less the Employee Optionholder Percentage of the Earnout Amount, and less any fees and expenses, including the employer portion of all employment or payroll Taxes or similar amounts owed by any Group Company as a result of, or with respect or attributable to, the Earnout Amount to be paid to Employee Optionholders), and (ii) the Surviving Company (for distribution to the Employee Optionholders based on each such Employee Optionholder's Pro Rata Share in accordance with the Allocation Schedule) the Employee Optionholder Percentage of the Earnout Amount (less any applicable withholding, fees and expenses, including the employer portion of all employment or payroll Taxes or similar amounts owed by any Group Company as a result of, or with respect or attributable to, the Earnout Amount to be paid to Employee Optionholders) by wire transfer of immediately available funds to an account designated in writing by the Surviving Company.

(d) In the event that, prior to the earlier of (i) the end of the Earnout Period and (ii) date of payment of the Earnout Amount, Parent or the Surviving Company is sold to a third

party (whether through an equity sale, merger or similar transaction, or a sale of all or substantially all of its assets), Parent shall require the acquiror in such a transaction to expressly assume and agree to perform Parent's obligations under this Section 2.09 in the same manner as if no such succession had taken place.

(e) Right of Setoff. Parent and the Surviving Company may, at their sole and absolute discretion, (i) hold back all or any portion of the Earnout Amount in an amount equal to the dollar value of Damages with respect to any pending claims for indemnification by a Parent Indemnified Party pursuant to Article 7, and (ii) set off against such held-back amount any amount finally determined to be owed to any Parent Indemnified Party pursuant to Article 7.

(f) Obligations of Parent. During the Earnout Period, Parent hereby covenants and agrees, and shall cause the Surviving Company, to (x) operate the Business of the Surviving Company in good faith, pursuant to commercially reasonable and sound business practices and (y) not take any actions or omit to take any actions with the intent to circumvent the Securityholders' ability to earn the Earnout Amount, including agreeing to the following:

(i) use commercially reasonable efforts to cause the Surviving Company to maintain good relations with all customers, including the management of such relationships;

(ii) together with Parent's other Subsidiaries and Affiliates, refrain from soliciting business or customers of the Business away from the Business;

(iii) continue to develop, market and support the products and services of the Group Companies at substantially similar levels as was the practice of the Group Companies as of Closing, including in the pursuit of new customers, to the extent commercially reasonable; and

(iv) maintain pricing reasonably consistent with the past practices of the Group Companies and, if Parent gives a customer a discount in a multi-element or bundled sale that includes any of the Group Companies' products or services, the total discount applied to the sale will be applied evenly across each of the products sold in such multi-element or bundled sale so that none of the products are discounted more than another product in the same multi-element or bundled sale.

Section 2.10 Holdback. At the Closing, a total amount equal to the Holdback Amount will be withheld from the Closing Merger Consideration, to be held back (a) for a period of twelve (12) months after the Closing Date (the "Primary Holdback Period") in the case of the Primary Holdback Amount, and used as partial security to satisfy any Excess Amount as set forth in Section 2.08 and to satisfy any claims of any Parent Indemnified Party for indemnification in accordance with Section 7.04(e) or (b) for a period of twenty four (24) months after the Closing Date (the "IP Holdback Period") and each of the Primary Holdback Period and the IP Holdback Period, a "Holdback Period") in the case of the IP Holdback Amount and used to satisfy any IP Claims of any Parent Indemnified Party for indemnification in accordance with Section 7.04(e). Upon the expiration of the applicable Holdback Period, any remaining balance of the Primary Holdback

Amount or the IP Holdback Amount, as the case may be, will be released by Parent to the Paying Agent or the Surviving Company, as applicable, in accordance with Section 7.07.

Section 2.11 Dissenting Shares. Notwithstanding any provision of this Agreement to the contrary, shares of Common Stock that are outstanding immediately prior to the Effective Time and that are held of record by shareholders who shall have not voted in favor of the Merger or consented thereto in writing and who shall have properly exercised appraisal rights in accordance with Section 262 of the DGCL (collectively, the “Dissenting Shares”, and such shareholders, “Dissenting Shareholders”) shall not be converted into or represent the right to receive the consideration to which the holder of such share would be entitled pursuant to Section 2.03. Such shareholders shall be entitled to receive payment of the “fair market value” of such Dissenting Shares held by them in accordance with the provisions of such Section 262 of the DGCL, except that all Dissenting Shares held by shareholders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such Dissenting Shares under such Section 262 of the DGCL shall, as of the later of the Effective Time or the time of the failure to perfect such rights or the loss of such rights, automatically be converted into and shall represent only the right to receive the consideration referred to in Section 2.03. The Company shall give Parent (i) prompt notice of (A) any written demand received by the Company prior to the Effective Time to require the Company to purchase shares of Common Stock pursuant to Section 262 of the DGCL and (B) any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to the CGCL (prior to the Conversion) or DGCL (after the Conversion), and (ii) the opportunity to direct all negotiations and proceedings with respect to any such demand, notice or instrument. Without limiting the generality of the foregoing, the Company shall not make any payment or settlement offer prior to the Effective Time with respect to any such demand unless Parent shall have consented in writing to such payment or settlement offer.

Section 2.12 Closing.

(a) The Closing. The closing (the “Closing”) of the transactions contemplated by this Agreement shall take place at the offices of Sidley Austin LLP located at 1999 Avenue of the Stars, Suite 1700, Los Angeles, CA 90067 or remotely via the electronic exchange of documents and signatures on the date hereof. The date and time of the Closing are referred to herein as the “Closing Date”.

(b) The Closing Transactions. Subject to the terms and conditions set forth in this Agreement, the parties shall consummate the following transactions at the Closing:

(i) the Company and Merger Sub shall cause the Certificate of Merger to be executed, acknowledged and filed with the Secretary of State of the State of Delaware;

(ii) in accordance with Section 2.05, Parent shall deliver, or cause to be delivered, the Closing Stockholder Consideration as set forth in the Pre-Closing Statement to the Paying Agent, by wire transfer of immediately available funds to the account(s) designated in writing by the Paying Agent;

(iii) in accordance with Section 2.04, Parent shall deliver, or cause to be delivered, the aggregate Closing Option Consideration set forth in the Pre-Closing Statement (A) to the Company or its designee, in the amount equal to the aggregate amount of Closing Option Consideration due to Employee Optionholders, for the benefit of the Employee Optionholders, by wire transfer of immediately available funds to the account designated in writing by the Company and (B) to the Paying Agent, in the amount equal to the aggregate amount of Closing Option Consideration due to Non-Employee Optionholders, for the benefit of the Non-Employee Optionholders, by wire transfer of immediately available funds to the account(s) designated in writing by the Paying Agent;

(iv) subject to Section 5.03, Parent shall repay, or cause to be repaid, on behalf of the Group Companies, all amounts necessary to discharge fully the then outstanding balance of all Indebtedness under the Existing Indebtedness, by wire transfer of immediately available funds to the account(s) designated by the holders of such Indebtedness;

(v) Parent and the Company shall make such other deliveries as are required by Article 8 hereof; and

(vi) Parent shall pay, or cause to be paid, on behalf of the Group Companies, the Transaction Expenses by wire transfer of immediately available funds as directed by the Representative; *provided* that any amounts related to unpaid Transaction Expenses that must be run through the Group Companies' payroll system and are subject to withholding will be transferred to the Company for further distribution through payroll to each of the payees listed on Schedule 2.12(b)(vi).

Section 2.13 Withholding. Notwithstanding any provision contained herein to the contrary, each of the Paying Agent, the Surviving Company, the Representative and Parent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of Applicable Law relating to Taxes. If the Paying Agent, the Surviving Company, the Representative or Parent, as the case may be, so withholds and properly pays over to the applicable Governmental Authority amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which the Paying Agent, the Surviving Company, the Representative or Parent, as the case may be, made such deduction and withholding. Parent shall use reasonable efforts to give the Representative reasonable prior notice of any such withholding (other than any amounts that are paid through payroll) and shall cooperate in good faith with the Representative in obtaining any available exemption from, or reduction in the amount of, any such withholding.

Section 2.14 Reference Statement. Exhibit B attached hereto sets forth an illustrative statement (the "Reference Statement") prepared in good faith by the Company in cooperation with Parent setting forth the various line items used (or to be used) in, and illustrating as of the date set forth therein, the calculation of Cash, Indebtedness and Closing Working Capital prepared and calculated in accordance with this Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

In addition to the representations and warranties set forth in this Article 3, the Company shall provide a schedule to Parent (the “Disclosure Schedules”) setting forth any exceptions to, or any disclosures required by, this Article 3. Any reference in a particular schedule contained in the Disclosure Schedules shall only be deemed to be an exception to (or, as applicable, a disclosure for purposes of) the representations and warranties (or covenants, as applicable) that are contained in the corresponding Section of this Agreement. Except as set forth in the Disclosure Schedules, the Company represents and warrants to Parent that as the Closing Date:

Section 3.01 Organization and Power; Books and Records.

(a) Each Group Company is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each Group Company is qualified to do business in every jurisdiction in which such qualification is necessary, except where the failure to be so qualified has not had or would not reasonably be expected to have a Material Adverse Effect. All jurisdictions in which each Group Company is qualified to do business are set forth on Schedule 3.01(a). Each Group Company has full power and authority necessary to own and operate its properties and to carry on the Business as now conducted and presently proposed to be conducted. Each Group Company has delivered to Parent true and complete copies of the articles of incorporation and bylaws (or similar organizational documents), each as amended to date, of such Group Company. No Group Company is in default under or in violation of any provision of its certificate of incorporation (or similar organizational document).

(b) Any and all existing stock ledgers, transfer books and minute books of each Group Company, which have been made available to Parent before the date hereof, are true and complete in all material respects and are in the possession of the Group Companies as of the date hereof.

Section 3.02 Company Authorization. The execution, delivery and performance by the Company of this Agreement and all Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby, are within the Company’s powers and have been duly authorized by the Company. This Agreement constitutes a valid and binding agreement of the Company except as limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Applicable Laws affecting the enforcement of creditors’ rights and (b) general rules of equity.

Section 3.03 Governmental Authorization. The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby by the Company require no action by or in respect of, or filing with, any Governmental Authority.

Section 3.04 Noncontravention.

(a) The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate the organizational documents of any Group Company, (ii) violate any Applicable Law, or any judgment, order or decree to which any Group Company is subject, (iii) require any consent

by or notification to any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any Material Contract or any material right or material obligation of any Group Company, or (iv) result in the creation or imposition of any Lien on any material asset of any Group Company, other than Permitted Liens.

(b) Neither the consummation of the transactions contemplated by this Agreement nor the execution, delivery or performance of this Agreement or the Ancillary Agreements will result in any of the following pursuant to the terms of any Contract to which any Group Company is a party or by which its properties or assets is bound: the grant, license or assignment to any Person of any interest in or to, the modification or loss of any rights with respect to, or the creation of any Lien on, any Company Intellectual Property.

Section 3.05 Capitalization.

(a) The authorized, issued and outstanding capital stock of each Group Company is set forth on Schedule 3.05(a). Except as set forth on Schedule 3.05(a), no Group Company directly or indirectly owns any capital stock of, or other equity interest in, or any interest convertible into, or exercisable or exchangeable for, any capital stock of, or other equity interest in, any other Person. All outstanding shares of capital stock of the Group Companies (a) have been validly issued and are fully paid and non-assessable, (b) are free and clear of any and all Liens other than Permitted Liens and (c) are not subject to, nor were they issued in violation of, any preemptive rights, rights of first refusal, or similar rights. Except for the exercise or conversion rights that attach to the Options that are listed on Schedule 3.05(b), there are no outstanding, (i) options, warrants, or other rights to purchase from any Group Company any shares of equity interests of such Group Company, (ii) securities convertible into or exchangeable for shares of equity interests of any Group Company, or (iii) other commitments of any kind for the issuance of equity interests or options, warrants, or other securities of any Group Company. There are no voting trusts, proxies or any other understandings with respect to the voting of the capital stock of any Group Company. No Group Company is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any of its capital stock.

(b) Schedule 3.05(b) accurately sets forth, with respect to each Option: (i) the name of the holder of such Option; (ii) the total number of shares of Common Stock that are subject to such Option; (iii) the date on which such Option was granted and its final vesting date; (iv) the number of shares of Common Stock subject to such Option that are vested and unvested as of the date hereof; (v) whether the vesting of such Option is subject to any acceleration in connection with the Merger, any termination of employment or separation from service, or any of the other transactions contemplated by this Agreement; and (vi) the exercise price per share of Common Stock purchasable under such Option. Each grant of an Option was duly authorized no later than the date on which the grant of such Option was by its terms to be effective (the “Grant Date”) by all necessary corporate action, including, as applicable and where necessary, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required shareholder approval, in each case, by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto and is in full force and effect, each such grant was made in accordance with the terms of the Company Stock Plan and all other Applicable Law, the per share exercise price of each Option was more than or equal to the fair market value of a share of Common Stock on the

applicable Grant Date and each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Group Companies.

Section 3.06 Financial Statements.

(a) The Company has made available to Parent the audited consolidated balance sheet and the related audited consolidated statements of operations, stockholders' equity and cash flows of the Group Companies as of and for each of the twelve (12)-month periods ended December 31, 2016 and 2017, respectively (the "Audited Financial Statements"), and (i) the unaudited consolidated balance sheet and related unaudited consolidated statements of operations, stockholders' equity and cash flows of the Group Companies as of and for each of the twelve (12)-month periods ended December 31, 2018 and 2019 and (ii) the unaudited balance sheet and the related unaudited statement of operations, stockholders' equity and cash flows as of the period commencing January 1, 2020 and ending on April 30, 2020 (collectively, the "Unaudited Financial Statements" and, together with the Audited Financial Statements, the "Company Financial Statements"). Except as set forth therein, the Company Financial Statements have been prepared in accordance with GAAP throughout the periods indicated therein (except that the Unaudited Financial Statements may not contain all of the notes required by GAAP), and present fairly, in all material respects, the financial position and results of operations of the Group Companies, as of the respective dates and for the respective periods indicated therein (subject in the case of the Unaudited Financial Statements to normal year-end adjustments). The unaudited balance sheet of the Group Companies as of April 30, 2020 shall be referred to in this Agreement as the "Current Balance Sheet" and the date thereof shall be referred to in this Agreement as the "Balance Sheet Date."

(b) The accounting books and records of the Group Companies accurately and fairly reflect the activities of the Group Companies in connection with the Business in all material respects.

(c) Except as set forth on Schedule 3.06(c), (a) all of the material accounts, accounts receivable, notes and notes receivable of the Group Companies are reflected on the books and records of the Group Companies, and represent valid obligations arising from bona fide arm's-length transactions in the ordinary course of business; and (b) the Group Companies have not received any written notice from any obligor thereof challenging the validity or collectability of any such material accounts receivable other than customer complaints in the ordinary course of business for which the Group Companies have accrued adequate and specific reserves on the Company Financial Statements. Other than as set forth on Schedule 3.06(c), there are no material customer credits or discounts due to any customers of the Group Companies.

Section 3.07 Absence of Certain Changes. Since January 1, 2020, and, except as contemplated by this Agreement, (i) the Business has been conducted in the ordinary course consistent with past practice, (ii) there has not been a Material Adverse Effect, and (iii) the Group Companies have not done any of the following:

(i) except for issuances as may result from the exercise of Options, issued, sold, pledged, transferred, leased or delivered any of its equity securities of any kind or issued or sold any securities convertible into, or options with respect

to, or warrants to purchase or rights to subscribe for, any of its equity securities (other than in connection with the Conversion);

(ii) directly or indirectly effected any recapitalization, reclassification, equity split or like change in its capitalization (other than in connection with the Conversion);

(iii) amended its certificate of incorporation or other similar organizational documents (other than in connection with the Conversion);

(iv) made any redemption or purchase of its equity interests (other than with respect to the repurchase of Common Stock (including in connection with the exercise or satisfaction of tax withholding in connection with any Options) from former employees pursuant to existing agreements or any Employee Plan);

(v) declared, set aside, made or paid any dividends in respect of shares of its capital stock (except as may be required under its organizational documents and other than dividends made prior to the Closing in cash);

(vi) sold, assigned, transferred or otherwise disposed of any material portion of its tangible assets, except in the ordinary course of business and except for sales of obsolete assets or assets with *de minimis* or no book value;

(vii) acquired any business, Person or material assets, by merger or consolidation, purchase of substantial assets or equity interests, or by any other manner, in a single transaction or a series of related transactions (other than in connection with the Conversion);

(viii) made any loans, capital contributions or advances to any Person (other than advancement of expenses and commissions to employees in the ordinary course of business consistent with past practice);

(ix) sold, assigned, transferred or exclusively licensed any material Intellectual Property Rights;

(x) materially amended, voluntarily terminated, waived any material right, claim or benefit, or accelerated any material obligation or Liability of the Company in any Material Contract other than in the ordinary course of business or as required by Applicable Law;

(xi) made any capital expenditures or commitments therefor in excess of \$50,000, except for such capital expenditures or commitments therefor that are reflected in the Company's current budget, as provided to the Parent prior to the date hereof;

(xii) entered into or amended or modified any other transaction, or amended or modified any existing Contract, with any of its Securityholders (or

Affiliates thereof), managers, officers and employees outside the ordinary course of business except pursuant to any agreement set forth on the Disclosure Schedules;

(xiii) except in the ordinary course of business and consistent with past practices or as required by Applicable Law or under the terms of any Employee Plan, (A) granted or promised to grant any incentive awards or make any material increase in the salaries, bonuses or other compensation and benefits payable by such Group Company to any of its officers or any employee with targeted total annual compensation in excess of \$50,000; (B) increased the benefits under any Employee Plan; (C) terminated or materially amended any Employee Plan or adopted any material arrangement for the current or future benefit or welfare of any officer or employee of such Group Company that would be an Employee Plan if it were in existence as of the date hereof; or (D) as a direct or indirect result of the COVID-19 pandemic, reduced compensation or benefits for any employees, reduced employee hours, or conducted layoffs or furloughs;

(xiv) settled or agreed to settle any pending or threatened action, suit, investigation or proceeding if the amount payable by such Group Company in connection therewith would exceed \$25,000;

(xv) incurred any Indebtedness, modified the terms of any Indebtedness or assumed or guaranteed the obligations of any other Person, or issued any note, bond or other debt security, in each case in excess of \$50,000;

(xvi) cancelled or reduced any insurance coverage other than with respect to any Employee Plan in the ordinary course of business consistent with past practice;

(xvii) adopted a plan of complete or partial liquidation, dissolution, consolidation, restructuring recapitalization or other reorganization of such Group Company other than in connection with the Conversion;

(xviii) prepared or filed any Tax Return inconsistent with past practice, made or changed any material election in respect of Taxes or material accounting policies of the Group Companies (including elections or methods that would have the effect of deferring income to periods ending after the Closing Date or accelerating deductions to periods ending on or before the Closing Date), filed any amended Tax Return, settled or otherwise compromised any claim relating to Taxes, entered into any closing agreement or similar agreement relating to Taxes, otherwise settled any dispute relating to Taxes, surrendered any right to claim a Tax refund, offset or other reduction in Tax liability, or requested any ruling or similar guidance with respect to Taxes, in each case unless required by Applicable Law or GAAP; or

(xix) entered into any agreement or commitment to do any of the foregoing.

Section 3.08 No Undisclosed Liabilities. There are no Liabilities of the Group Companies other than: (a) as reflected in, reserved against or disclosed in the Current Balance Sheet or (b) Liabilities that are not material individually or in the aggregate.

Section 3.09 Material Contracts.

(a) Schedule 3.09(a) contains a list of all outstanding Contracts referred to in clauses (i) through (xviii), inclusive, of this Section 3.09(a) to which any Group Company is a party (each Contract required to be disclosed hereunder, a “Material Contract” and, collectively, the “Material Contracts”), complete and accurate copies of which have been made available to Parent:

(i) any lease (whether of real or personal property) providing for annual rentals of \$25,000 or more;

(ii) any agreement for the purchase of materials, supplies, goods, services, development, equipment or other assets providing for either (A) annual payments by any Group Company of \$10,000 or more, or (B) aggregate payments by any Group Company of \$50,000 or more;

(iii) Contracts with Major Customers or Major Vendors;

(iv) any sales, partnering, development or other similar agreement providing for the sale by any Group Company of products, services or other assets that provides for either (A) annual payments to any Group Company of \$25,000 or more (excluding ordinary course customer Contracts) or (B) aggregate payments to any Group Company of \$50,000 or more;

(v) any partnership, joint venture or other similar agreement or arrangement;

(vi) any agreement relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise) (other than with respect to the Conversion);

(vii) any agreement relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset), except any such agreement with an aggregate outstanding principal amount not exceeding \$50,000 and which may be prepaid on not more than thirty (30) calendar days’ notice without the payment of any penalty;

(viii) any (A) option, franchise or similar agreement, (B) inbound license of Intellectual Property Rights or Technology to any Group Company, other than Off-the-Shelf Software Licenses, or (C) outbound license of Intellectual Property Rights, Company Products or other Company Intellectual Property or sublicense of Licensed Intellectual Property by any Group Company, other than any non-exclusive outbound license to use Company Products entered into on the Group Companies’ standard-form License and Support Agreement template (as

negotiated, without material modification) in the ordinary course of business consistent with past practice;

(ix) any agreement by which any Group Company has assigned, or agreed to assign, ownership of, or any beneficial interest in, any Intellectual Property Rights to any Person;

(x) any agency, dealer, sales representative, distribution, marketing or other similar agreement;

(xi) any agreement that (A) limits the freedom of any Group Company or its Affiliates to compete in any line of business or against any Person or in any area or which would so limit the freedom of such Group Company or its Affiliates after the Closing Date or (B) provides for pricing or other contract terms on a “most favored nations” or similar basis;

(xii) any agreement with (A) any Group Company, any Securityholder or any of their respective Affiliates, (B) any Person directly or indirectly owning, controlling or holding with power to vote, five percent (5%) or more of the outstanding voting shares of any Group Company or any of its Affiliates, (C) any Person, five percent (5%) or more of whose outstanding voting shares are directly or indirectly owned, controlled or held with power to vote by any Group Company, any Securityholder or any of their respective Affiliates, or (D) any director or officer of any Group Company or any of its Affiliates or any “associates” or members of the “immediate family” (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the Exchange Act) of any such director or officer, in each case other than employment agreements entered into in the ordinary course of business;

(xiii) any indemnification agreements, other than in connection with commercial transactions in the ordinary course of business;

(xiv) any contract with a Governmental Authority;

(xv) confidentiality and non-disclosure agreements (whether the applicable Group Company is the beneficiary or the obligated party thereunder), other than those related to commercial transactions in the ordinary course of business;

(xvi) each Contract or other agreement with an employee or other Company service provider that provides for severance, retention bonus, advance notice of termination, change in control bonus, accelerated vesting, or any other Contract or agreement that provides for amounts or benefits that will be payable or due as a result of any of the transactions or events contemplated by this Agreement;

(xvii) each Contract (including but not limited to any collective bargaining agreement) with any labor union, employee association, or other labor organization;
or

(xviii) any separation agreement or settlement agreement under which a Group Company has any current actual or potential liability, as well as any settlement agreement, consent decree, or other similar agreement with any Governmental Authority.

(b) (i) Each Material Contract is a valid and binding agreement of the applicable Group Company except as limited by (A) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Applicable Laws affecting the enforcement of creditors' rights and (B) general rules of equity, and is in full force and effect, (ii) the applicable Group Company and, to the Company's Knowledge, any other party thereto is not in default or breach in any material respect of any Material Contract, nor has taken any actions which would give rise to any right of termination, cancellation or acceleration under the terms of any such Material Contract, and (iii) to the Knowledge of the Company, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract. The Group Companies have not received any written notice that a Group Company is in breach of, or default under, any Material Contract or that any counterparty to any Material Contract intends to terminate or fail to renew any such Material Contract.

Section 3.10 Litigation. There is, and for the past five (5) years has been, no action, suit, investigation or proceeding pending or, to the Knowledge of the Company, threatened, to which any Group Company is or was a party or to which any Group Company's property is or was subject, before any arbitrator or any Governmental Authority that, individually or in the aggregate (a) resulted in a judgment in excess of \$25,000 (or if currently pending, would reasonably be expected to result in such a judgment), (b) was material to such Group Company (or if currently pending, would reasonably be expected to be material) or (c) in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement. To the Knowledge of the Company, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will, or that could reasonably be expected to, give rise to or serve as the basis for the commencement of any such action, suit, investigation or proceeding. There is no order, writ, injunction, judgment or decree to which the Company, or any of the assets owned or used by any Group Company, is subject. No officer or, to the Knowledge of the Company, any other employee of any Group Company is subject to any order, writ, injunction, judgment or decree that prohibits such officer or other employee from engaging in or continuing any conduct, activity or practice relating to the Business.

Section 3.11 Compliance with Laws and Court Orders. No Group Company is in material violation of, and has not for the past five (5) years, violated in any material respect, any Applicable Law. No Group Company has been threatened in writing to be charged with or given written notice of any violation of, any Applicable Law, and to the Knowledge of the Company, no Group Company is under investigation with respect to any violation of any Applicable Law. Since January 1, 2020, each Group Company is and has been in compliance with any and all Applicable Laws and orders relating to the COVID-19 pandemic, including, without limitation, regarding working conditions for essential employees and provision of employee benefits.

Section 3.12 Leases and Properties.

(a) Each Group Company has good and marketable fee simple title to, or in the case of leased property and assets has valid license or valid leasehold interests in, all property and assets (whether real, personal, tangible or intangible) reflected on the Current Balance Sheet or acquired after the Balance Sheet Date, except for properties and assets sold since the Balance Sheet Date in the ordinary course of business consistent with past practice. None of such property or assets is subject to any Lien, except for Permitted Liens.

(b) There are no events affecting any such property or assets pending or, to the Knowledge of the Company, threatened, which would materially detract from the value, materially interfere with any present use or materially and adversely affect the marketability of any such property or assets.

(c) Schedule 3.12(c) sets forth a list of all real property leased, subleased, licensed or otherwise occupied by the Group Companies (the “Leased Real Property”). All Leased Real Property is leased or subleased by the applicable Group Company pursuant to the leases or other agreements also listed in Schedule 3.12(c) (the “Leased Real Property Leases”). Each Leased Real Property Lease is in full force and effect against the applicable Group Company and against each other party thereto. The applicable Group Company has a good and valid leasehold interest in each Leased Real Property, free and clear of Liens except for Permitted Liens. No Group Company is, and to the Knowledge of the Company, no other party thereto is, in default under any Leased Real Property Lease, and no Group Company has received written notice of any breach or default thereunder, or cancellation or termination thereof. There are no conditions, events or circumstances which, with notice or lapse of time, or both, would constitute a breach or default by the applicable Group Company or, to the Knowledge of the Company, any other party thereto under any Leased Real Property Lease. The Company has made available to Parent true, correct and complete copies of each Leased Real Property Lease.

(d) The Group Companies do not own any real property. The equipment and the structures and fixtures on the Leased Real Property owned by the Group Companies have no material patent defects, are in good operating condition and repair and have been reasonably maintained (giving due account to the age and length of use of same, ordinary wear and tear excepted), and are adequate and suitable for their present uses.

(e) The Leased Real Property constitutes all real property held or used by the Group Companies to conduct, operate or manage the Business.

Section 3.13 Intellectual Property.

(a) Products and Services. Schedule 3.13(a) accurately identifies and describes as of the date of this Agreement each product and service developed, marketed, licensed, sold, performed, distributed or otherwise made available by the Group Companies as of the date hereof, during the three (3) year period prior to the date of this Agreement, including any product or service currently under development by any Group Company (collectively, the “Company Products”).

(b) Registered IP. Schedule 3.13(b) accurately identifies as of the date of this Agreement (i) each item of Company Registered IP, (ii) the jurisdiction in which such item of Company Registered IP has been registered or filed and the applicable application, registration, or

serial or other similar identification number, (iii) any other Person that has an ownership interest in such item of Company Registered IP and the nature of such ownership interest and (iv) all unregistered trademarks, and any other material unregistered Intellectual Property Rights included in the Company Intellectual Property and used in the conduct of the Business as currently conducted.

(c) Ownership. The Group Companies exclusively own all right, title and interest in and to the Company Intellectual Property free and clear of any Liens, other than Permitted Liens. Except as set out on Schedule 3.13(c), each Person who is or was an employee of a Group Company and who is or was involved in the creation or development of any Company Intellectual Property has signed an enforceable agreement containing an assignment to the applicable Group Company of all Intellectual Property Rights in such Person's contribution to the Company Intellectual Property. Except as set out on Schedule 3.13(c), each Person (other than an employee of a Group Company) who is or was involved in the creation or development of any Company Intellectual Property has signed an enforceable agreement containing an assignment to the applicable Group Company of all Intellectual Property Rights in such Person's contribution to the Company Intellectual Property. No current or former shareholder, officer, director or employee of the Group Companies has any claim, right (whether or not currently exercisable) or ownership interest in any Company Intellectual Property. No employee of the Group Companies is (i) bound by or otherwise subject to any Contract restricting such employee from performing their duties for the Group Companies or (ii) in breach of any Contract with any former employer or other Person concerning Intellectual Property Rights or confidentiality due to their activities as an employee of the Group Companies.

(d) Payment Obligations. Schedule 3.13(d) contains a complete and accurate list of all Contracts (other than Off-the-Shelf Software Licenses) pursuant to which any Group Company is obligated to pay royalties, fees, commissions and other amounts (other than sales commissions paid to employees according to the such Group Company's standard commissions plan) for the use of any Company Intellectual Property or Licensed Intellectual Property.

(e) Registration; Validity. All Company Registered IP is valid, subsisting and enforceable. The Group Companies have preserved and maintained the confidential and trade secret nature of material trade secrets and confidential information included in Company Intellectual Property. The Group Companies have made all filings and payments and taken all other actions required to be made or taken to maintain each such item of Company Registered IP in full force and effect by the applicable deadline and otherwise in accordance with all Applicable Laws, and, except as set out on Schedule 3.13(e), no filing or payment will come due with respect to any Company Registered IP within sixty (60) days following the date hereof. No interference, opposition, reissue, reexamination, or other proceeding is, or in the past five (5) years has been, pending or, to the Knowledge of the Company, threatened, in which the scope, validity or enforceability of any Company Registered IP is being or has been contested or challenged. Each item of Company Registered IP is in compliance in all material respects with all legal requirements and all filings, payments, and other actions required to be made or taken to maintain such item of Company Registered IP in full force and effect have been made by the applicable deadline. No application for a patent, copyright registration, trademark registration, or any other type of material Company Registered IP filed by or on behalf of the Group Companies at any time during the past five (5) years has been unintentionally abandoned or allowed to lapse. To the Knowledge of the

Company, no trademark or trade name owned, used or applied for by the Group Companies conflicts or interferes with any trademark or trade name owned, used, and applied for by any other Person. No event or circumstance (including a failure to exercise adequate quality controls and an assignment in gross without the accompanying goodwill) has occurred or exists that has resulted in, or would reasonably be expected to result in, the unintended abandonment of any material trademark (whether registered or unregistered) owned, used or applied for by the Group Companies.

(f) Infringement of Company Intellectual Property. To the Knowledge of the Company, no Person has infringed, misappropriated or otherwise violated, and no Person is currently infringing, misappropriating or otherwise violating, any Company Intellectual Property.

(g) Effect of Transaction. Neither the execution, delivery or performance of this Agreement nor the consummation of any of the transactions or agreements contemplated by this Agreement will, with or without notice or the lapse of time, result in or give any other Person the right or option to cause or declare: (i) a loss of or Lien on, any Company Intellectual Property; (ii) a breach of, termination of or acceleration or modification of any right or obligation under any Material Contract; (iii) the release, disclosure or delivery of any Company Intellectual Property by or to any escrow agent or other Person; or (iv) the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any Company Intellectual Property.

(h) Sufficiency. The Group Companies own or otherwise have the right to use all Technology and Intellectual Property Rights used in or necessary for the conduct the Business as currently conducted, including the development, promotion and sale of all of the Company Products.

(i) Non-infringement. No Group Company has infringed, misappropriated or otherwise violated any Intellectual Property Right of any other Person. No infringement, misappropriation or similar claim or proceeding is pending or, to the Knowledge of the Company, threatened against any Group Company or any Person who may be entitled to be indemnified or reimbursed by any Group Company with respect to such claim or proceeding. No Group Company has received any notice or other written communication relating to any actual, alleged or suspected infringement, misappropriation or violation of any Intellectual Property Right of another Person.

(j) Software. None of the Company Products (i) contains any bug, defect or error that materially and adversely affects the use, functionality or performance of such Company Product or (ii) materially fails to comply with any applicable warranty or other contractual commitment relating to the use, functionality or performance of such Company Product.

(k) Malicious Code. No Company Product contains any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” “worm,” “spyware” or “adware” (as such terms are commonly understood in the software industry) or any other code designed or intended by the Company to have any of the following functions: (i) disrupting, disabling, harming or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) compromising the privacy or data security of a user or damaging or destroying any data or file without the user’s consent (collectively, “Malicious Code”). For the avoidance of doubt, the term

“Malicious Code” excludes devices or software modules that meet each of the following criteria: the device or software module (A) is designed by the Company to identify authorized use of the Company Product at issue; and (B) is disclosed to customers and prospective customers of such Company Product. Each Group Company has implemented and maintained reasonable measures designed to prevent the introduction of Malicious Code into the Company Products, including firewall protections and periodic virus scans and for taking and storing back-up copies of all Software included in the Company Products.

(l) Source Code. Except as set forth on Schedule 3.13(l), no source code, owned by a Group Company, for any Company Product has been delivered, licensed or made available to any escrow agent or other Person who is not, as of the date of this Agreement, an employee of the Group Companies. Except as set forth on Schedule 3.13(l), no Group Company has any duty or obligation (whether present, contingent or otherwise) to deliver, license or make available such source code for any Company Product to any escrow agent or other Person. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or would reasonably be expected to, result in the delivery, license or disclosure of any source code (other than Software that constitutes Licensed Intellectual Property and is subject to an Open Source License) for any Company Product to any other Person who is not, as of the date of this Agreement, an employee of the Group Companies.

(m) Open Source. Except as set forth on Schedule 3.13(m), no Company Product (nor any portion thereof) that was developed by or on behalf of the Group Companies, is subject to any “copyleft” or other obligation or condition (including any obligation or condition under any Open Source License) that (i) requires, or conditions the use or distribution of such Company Product or portion thereof on, (A) the disclosure, licensing or distribution of any Company source code for any portion of such Company Product or (B) the granting to licensees of the right to make derivative works or other modifications to such Company Product, or portions thereof or (ii) would, by its terms, otherwise impose any limitation, restriction or condition on the right or ability of any Group Company to use, distribute or charge for any such Company Product.

(n) Funding Sources. No funding, facilities or personnel of any Governmental Authority or any public or private university, college or other educational or research institution were used, directly or indirectly, to develop or create, in whole or in part, any Company Intellectual Property or Company Product.

(o) Standards Bodies. No Group Company has participated in any industry standards body or similar organization in a manner that requires or obligates such Group Company to grant or offer to any other Person any license or right to any Company Intellectual Property.

(p) Privacy.

(i) Information Security/Internal Policies and Procedures. Each Group Company has in place and has taken steps reasonably designed to assure compliance with its data security policies and procedures, which policies and procedures have been provided or disclosed to Parent (the “Security Policies”).

(ii) Information Security; Third Party Storage and Handling; Confidentiality. Each Group Company takes steps reasonably designed to ensure that all Contracts with third parties that have access to Personal Data include requirements with respect to such third party's handling of Personal Data that are consistent with the Security Policies and otherwise sufficient to meet such Group Company's obligations under Privacy and Security Laws and such Group Company's other contractual obligations, including any confidentiality obligations. No Group Company is in material breach of any contractual obligation to secure or otherwise safeguard Personal Data it receives in connection with the provision of the Company Products.

(iii) Information Security; No Unauthorized Access or Acquisition. No Group Company has experienced any event of access to or acquisition of any Personal Data by an unauthorized Person, including third parties and employees of such Group Company acting outside of the scope of their authority or authorization in a manner which is otherwise unlawful (each, a "Data Breach"), and has not been required by any Privacy and Security Laws to make any notifications to customers or individuals arising out of or relating to any Data Breach. Since January 1, 2014, no Group Company has experienced any breach of unsecured Protected Health Information (as defined in 45 C.F.R. § 164.402(1)), and no Person has gained unauthorized access to or caused a security breach (including any loss of confidentiality, integrity or availability) with respect to any IT Systems or Personal Data thereon in any material respect.

(iv) Privacy Policy and Practices. True and correct copies of all applicable current internal and customer or user-facing Group Company privacy policies ("Company Privacy Policies") have been provided to Parent. Each Group Company has materially complied with all Company Privacy Policies and has complied with Privacy and Security Laws in connection with the provision of the Company Products. No disclosures made or contained in any Company Privacy Policy to any customer have been inaccurate or in violation of any Privacy and Security Laws in any material respect.

(v) Privacy Practices; No Proceedings. There is no complaint to or audit, proceeding, investigation (formal or informal) or claim currently pending against, any Group Company by (A) any private party or (B) any Governmental Authority, with respect to the collection, use or disclosure of Personal Data.

Section 3.14 Information Technology.

(a) All IT Systems used by the Group Companies are owned by, or licensed or leased to, the Group Companies. Copies or details of all licenses and leases relating to the IT Systems (other than Off-the-Shelf Software Licenses) are listed in Schedule 3.14(a). The Group Companies are the legal and beneficial owner of, or have a contractual right to use the IT Systems free from Liens, except for Permitted Liens, and have not, in the twelve (12) months prior to the date of this Agreement, received written notice from a third party alleging that any Group Company is in default under licenses or leases relating to the IT Systems.

(b) The IT Systems have adequate capability and capacity for all of the processing and other functions currently required by the Group Companies.

(c) The Group Companies have in effect reasonable disaster recovery plans, procedures and facilities for its business and have taken reasonable steps to safeguard the security and the integrity of their IT Systems. The Group Companies have implemented and maintained organizational, administrative, physical and technical safeguards reasonably necessary to (i) secure the IT Systems and Company Products, and any Personal Data stored on such IT Systems, from unauthorized access, acquisition, interruption, alteration, modification, use or other processing, or any other compromise of confidentiality, integrity or security; (ii) defend the IT Systems and Company Products against denial of service attacks, distributed denial of service attacks, hacking attempts and like attacks and activities by any other Person; and (iii) provide for the continued, uninterrupted and error-free operation of the IT Systems and Company Products (to the extent such Company Products rely on the IT Systems), including employing commercially reasonable security, maintenance, disaster recovery, redundancy, backup, archiving and virus or malicious device scanning/protection measures. There have been no unauthorized intrusions or breaches of the security with respect to the IT Systems. The Group Companies have implemented any and all necessary security patches or upgrades that are generally available for the IT Systems.

Section 3.15 Insurance Coverage. The Company has furnished to Parent a list of, and summary plans documents with respect to, all insurance policies and surety agreements relating to the assets, Business, operations, employees, officers or directors of the Group Companies. There is no claim by any Group Company pending under any of such policies or surety agreements as to which coverage has been questioned, denied or disputed by the underwriters of such policies or surety agreements in writing or in respect of which such underwriters have reserved their rights in written notice to the Company. All premiums payable under all such policies and surety agreements have been timely paid and the Group Companies have otherwise complied in all material respects with the terms and conditions of all such policies and surety agreements. Such policies of insurance and surety agreements (or other policies and surety agreements providing substantially similar insurance coverage) are in full force and effect. To the Knowledge of the Company, there is no threatened termination of, premium increase with respect to, or material alteration of coverage under, any of such policies or surety agreements.

Section 3.16 Licenses and Permits. Schedule 3.16 sets forth a true, correct and complete list of each material license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or Business (collectively, the “Permits”) together with the name of the Governmental Authority issuing such Permit. The Permits are valid and in full force and effect, no Group Company is in default under (and, to the Knowledge of the Company, no condition exists that with notice or lapse of time or both would constitute a default under) the Permits and none of the Permits will be terminated or become terminable, in whole or in part, as a result of the transactions contemplated by this Agreement.

Section 3.17 No Brokers. Except as set forth on Schedule 3.17, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of any Group Company, Securityholder or any of their respective Affiliates who is entitled to any fee or commission payable by a Group Company in connection with the transactions contemplated by this Agreement.

Section 3.18 Employees.

(a) The Company has provided to Parent a true, correct and complete list of all current employees and independent contractors of the Group Companies, showing, as applicable, for each as of the date of this Agreement: (i) their names (to the extent permitted by Applicable Laws) and status as an employee or contractor, (ii) the entity with which they are employed or engaged and their location (country, state, city), (iii) their start date, (iv) their positions and job titles, (v) their full-time, part-time, or temporary status, (vi) their base salaries or base hourly wage or contract rate, (vii) their target bonus rates or target commission rates, (viii) any other compensation payable to them (including compensation payable pursuant to any other bonus, deferred compensation, commission arrangements or other compensation, and/or severance payments), (ix) if applicable, any promises or commitments made to them with respect to changes or additions to their compensation or benefits that were made outside of the ordinary course of business (x) their visa status, if applicable, (xi) designation of whether they are classified as exempt or non-exempt for purposes of the Fair Labor Standards Act and any similar foreign or state Applicable Law (employees only) and (xii) accrued but unused vacation time and/or paid time off.

(b) Each Group Company (i) is, and at all times during the past five (5) years has been, in compliance in all material respects with all Applicable Laws pertaining to employment and employment practices, including but not limited to wages, hours, compensation, employee classification (either as exempt or non-exempt, or as a contractor versus employee), fringe benefits, paid sick leave, employment or termination of employment, leave of absence rights, employment policies, immigration, terms and conditions of employment, child labor, labor or employee relations, affirmative action, government contracting obligations, equal employment opportunity and fair employment practices, disability rights or benefits, workers' compensation, unemployment compensation and insurance, health insurance continuation, whistle-blowing, privacy rights, harassment, discrimination, retaliation, and working conditions or employee safety or health; (ii) has withheld and reported all amounts required by any Applicable Law to be withheld and reported with respect to wages, salaries and other payments or compensation to any employee of any Group Company; (iii) has no material Liability for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing; and (iv) has no Liability for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority with respect to unemployment compensation benefits, social security or other benefits or obligations for any employee of such Group Company (other than routine payments to be made in the normal course of business and consistent with past practice).

(c) There are no currently pending, and have not been during the past five (5) years, any actions; suits; arbitrations; written or, to the Company's Knowledge, oral claims, charges, complaints, investigations or grievances; or other legal proceedings against any Group Company, or to the Company's Knowledge, threatened to be brought or filed, by or with any Person or any Governmental Authority or arbitrator in connection with the employment or engagement of any current or former employee, applicant, contractor, or other service provider of any Group Company, including but not limited to any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage or hours violations, unpaid wages, misclassification, unpaid commissions, wrongful termination or any other employment related matter arising under Applicable Laws. No Group Company has implemented any "plant closing" or "mass layoff" of employees that would reasonably be expected to require notification

under the WARN Act or any similar state or local Applicable Law, no such “plant closing” or “mass layoff” will have been implemented within the ninety (90) days prior to the Closing Date, and there has been no “employment loss” as defined by the WARN Act within the ninety (90) days prior to the Closing Date.

(d) Each Person providing services to the Group Companies that has been characterized as a consultant or independent contractor and not as an employee has been properly characterized as such and no Group Company has any material liability or obligations, including under or on account of any Employee Plan, arising out of the hiring or retention of Persons to provide services to the Group Companies and treating such Persons as consultants or independent contractors and not as employees of the Group Companies. All employees of the Group Companies have been correctly classified as exempt or non-exempt for purposes of the Fair Labor Standards Act and any similar foreign state Applicable Law, and, if applicable, overtime has been properly recorded and paid for all such employees classified as non-exempt.

(e) During the past five (5) years, (i) no allegations of sexual harassment, discrimination or misconduct have been made to the Company against any (A) officer or director of the Group Companies, or (B) any employee of the Group Companies who, directly or indirectly, supervises or has managerial authority over other employees or service providers of the Group Companies, and (ii) no Group Company has entered into any settlement agreement or conducted an investigation related to allegations of sexual harassment, discrimination or misconduct by an employee, contractor, director, officer, or other representative of the Group Companies.

(f) To the Company’s Knowledge, all employees of the Group Companies have the legal right to perform services for the Group Companies without condition in accordance with local immigration, work permit and similar Applicable Laws and regulations. No Group Companies’ employee or contractor has notified the Group Companies that he or she intends to terminate his or her employment or engagement. The services provided by each employee and contractor of the Group Companies are terminable at the will of the Group Companies without incurring any liability or obligation other than the payment of accrued salary, wages and vacation.

(g) To the Company’s Knowledge, no employee of the Group Companies is in material violation of any term of any employment agreement, noncompetition agreement, confidentiality and inventions assignment agreement or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Group Companies because of the nature of the business conducted or presently proposed to be conducted by the Group Companies or to the use of trade secrets or proprietary information of others.

Section 3.19 Labor Matters. No Group Company is a party to or subject to any collective bargaining agreements or other Contract with any labor organization or other representative of any Group Companies employees, nor is any such Contract, as of the date of this Agreement, being negotiated. No labor union or other collective bargaining unit represents or, to the Company’s Knowledge, claims to represent any of the Group Companies’ employees; and to the Company’s Knowledge, there is no union campaign being conducted to solicit cards from employees to authorize a union to request a National Labor Relations Board certifications election with respect to the Group Companies’ employees (if applicable).

Section 3.20 Employee Benefit Plans.

(a) Schedule 3.20 contains a correct and complete list of each Employee Plan. For purposes of this Agreement, an “Employee Plan” means each “employee benefit plan,” as defined in Section 3(3) of ERISA, each employment, severance, change-in-control, fringe benefit, collective bargaining or similar contract, plan, arrangement or policy and each other plan or arrangement (written or oral) providing for compensation, bonuses, profit-sharing, stock option or other stock related rights or other forms of incentive or deferred compensation, vacation benefits, insurance (including any stop-loss arrangements), health or medical benefits, welfare or fringe benefit, employee assistance program, disability or sick leave benefits, workers’ compensation, supplemental unemployment benefits, severance benefits and post-employment or retirement benefits (including compensation, pension, health, medical or life insurance benefits) which is maintained, administered or contributed to by any Group Company and covers any current or former employee, director, consultant or independent contractor of any Group Company, or with respect to which any Group Company has any present or future liability, in either case whether written or unwritten, formal or informal, and whether or not subject to ERISA. True, correct and complete copies of the following documents with respect to each of the Employee Plans have been made available to Parent to the extent applicable: (i) all Employee Plans and all sub-plans and trust documents, insurance contracts or other funding arrangements, and amendments related thereto to the extent currently effective, (ii) the most recent Form 5500 and all schedules thereto, (iii) the most recent actuarial report, if any, (iv) the most recent IRS determination or opinion letter, (v) the most recent summary plan description, (vi) the most recent nondiscrimination testing results, and (vii) a written summary of any unwritten material Employee Plan.

(b) No Group Company nor any ERISA Affiliate of any Group Company has ever maintained, sponsored, participated, or contributed to (i) any multiemployer plan as defined in Section 3(37) of ERISA, (ii) any multiple employer plan as described in Section 413 of the Code, or (iii) any “employee pension benefit plan,” within the meaning of Section 3(2) of ERISA subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code. There has been no violation of Part 4 of Subtitle B of Title I of ERISA by any plan fiduciary of any Employee Plan that could subject a Group Company or an employee of a Group Company to any material liability (including liability on account of an indemnification obligation), and no Group Company has been assessed any civil penalty under Section 502(l) of ERISA.

(c) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and has received a favorable determination letter (or is entitled to rely upon an opinion letter) and the Company has no Knowledge of any circumstance which could result in loss of such qualification under Section 401(a) of the Code. Each Employee Plan has been maintained in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations, including ERISA and the Code, which are applicable to such Employee Plan. To the Company’s Knowledge, no events have occurred with respect to any Employee Plan that could result in payment or assessment by or against any Group Company of any material excise taxes under Sections 4972, 4975, 4976, 4977, 4979, 4980B, 4980D, 4980E, 4980H or 5000 of the Code.

(d) No Group Company has current or projected liability in respect of post-employment or post-retirement health, medical or life insurance or other employee welfare benefits

for retired, former or current employees of the Group Companies, except as may be required under Part 6 of the Subtitle B of Title I of ERISA, or similar state Applicable Laws and at the sole expense of such individual, and no Group Company nor any ERISA Affiliate of any Group Company has ever represented, promised or contracted (whether in oral or written form) to any employee (either individually or to the employees as a group) or any other Person that such employees or other Person would be provided with life insurance, health, medical or other employee welfare benefits after termination of employment, except to the extent required by Applicable Law.

(e) No condition exists that would prevent any Group Company from amending or terminating any Employee Plan in accordance with its terms, without liability to Parent or the Group Companies (other than ordinary administrative expenses).

(f) All contributions and payments (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each Employee Plan, and all contributions and premium payments for any period ending on or before the Closing Date that are not yet due have been made to each Employee Plan or accrued in accordance with GAAP and past custom and practice of the Group Companies on the Financial Statements.

(g) The consummation of the transactions contemplated by this Agreement will not (either alone or together with any other event, including a subsequent termination of employment or service) entitle any current or former employee, officer, director, consultant or independent contractor of the Group Companies to severance pay or accelerate the time of payment or vesting or trigger any payment of funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any Employee Plan. No payment or benefit that has been or could be received by any current or former employee, officer, director, consultant or independent contractor of the Group Companies will, or could reasonably be expected to, give rise, directly or indirectly, to the payment of any amount that would be characterized as a “parachute payment” within the meaning of Section 280G(b)(2) of the Code. There is no contract, plan, agreement or arrangement by which any Group Company is bound to compensate any employee for excise taxes paid pursuant to Section 4999 of the Code.

(h) There are no outstanding loans or other extensions of credit made by any Group Company to any executive officer or directors of the Group Companies (other than under the Company’s 401(k) plan).

(i) There is no action, suit, investigation, audit or proceeding pending against or involving or, to the Knowledge of the Company, threatened against or involving any Employee Plan. No facts or circumstances exist which would reasonably be expected to give rise to any such actions, suits, investigations, audits or proceedings.

(j) No payment pursuant to any Employee Plan or other arrangement to any “service provider” (as such term is defined in Section 409A of the Code and the United States Treasury Regulations and IRS guidance thereunder) would subject any Person to tax pursuant to Section 409A of the Code, whether pursuant to the transactions contemplated by this Agreement or otherwise.

(k) No Group Company has any unsatisfied obligation to any employees or qualified beneficiaries pursuant to the Patient Protection and Affordable Care Act of 2010, as amended, and all regulations thereunder (together, the “ACA”). The Group Companies are in compliance in all material respects with all applicable requirements of (i) the ACA, and (ii) any state or local law governing health care coverage or benefits that would result in any material liability to any Group Company. No material excise tax or penalty under the ACA, including Sections 4980D and 4980H of the Code, is outstanding, has accrued, or has arisen with respect to any period prior to the closing, with respect to any Employee Plan. Each Group Company has maintained all records necessary to demonstrate its compliance with the ACA and any other similar state or local law.

(l) The Company maintains no Employee Plans that cover or have covered current or former employees, directors, consultants or independent contractors of any Group Company who work or worked outside the United States. No Employee Plan is subject to any of the legal requirements of any jurisdiction outside of the United States.

Section 3.21 Environmental Matters. The Group Companies have received no notice, notification, demand, request for information, citation, summons or order, in each case in writing alleging any violation of any Environmental Law, and no complaint has been filed, no penalty has been assessed and no investigation, action, claim, suit, or proceeding is pending or, to Knowledge of the Company, threatened by any Governmental Authority or other Person with respect to any alleged violation of any Environmental Law. No Group Company has entered into any settlement, admitted to Liability, consented to the entry of any order, decree, ruling or judgment or otherwise resolved any pending or threatened action or suit against such entity arising under any Environmental Law, or has any agreement with any Governmental Authority relating to any environmental Liability or violation or any environmental or Hazardous Substance cleanup. To the Knowledge of the Company, there are no facts, conditions, situations, or sets of circumstances which could reasonably be expected to result in or be the basis for any Liability of any Group Company arising under or relating to any Environmental Law, and no Hazardous Substance has been discharged, disposed of, dumped, injected, pumped, deposited, spilled, leaked, emitted or released at, on or under any property now or previously owned, leased or operated by the Group Companies. Each Group Company is, and at all times during the past five (5) years has been, in material compliance with all Environmental Laws. For purposes of this Section 3.21, the term “Group Company(ies)” shall include any entity which is, in whole or in part, a predecessor of any Group Company (including any former Subsidiary of any Group Company).

Section 3.22 Tax Matters.

(a) Except as set forth on Schedule 3.22(a), the Group Companies have timely filed with the appropriate Taxing Authority all income and other Tax Returns required to be filed. All such Tax Returns are true, accurate and complete in all material respects. All Taxes due and owing by the Group Companies (whether or not shown on any Tax Return) have been timely paid. No Group Company is currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where any Group Company does not file Tax Returns that such Group Company is or may be subject to Tax by that jurisdiction.

(b) The unpaid Taxes of the Group Companies did not, as of the Balance Sheet Date, exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Current Balance Sheet (rather than in any notes thereto). Since the Balance Sheet Date, the Group Companies have not incurred any liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(c) No deficiencies for Taxes with respect to the Group Companies have been claimed, proposed or assessed in writing by any Taxing Authority, other than deficiencies that have been resolved,. No audit, assessment or other action for or relating to Taxes of the Group Companies has been commenced or threatened in writing. The Company has delivered or made available to Parent complete and accurate copies of all federal, state, local, and foreign Tax Returns filed by the Group Companies for the last six taxable years. The Group Companies have made available to Parent complete and accurate copies of all private letter rulings, determination letters, and closing agreements issued by or received from the IRS or any other Taxing Authority with respect to Tax matters of the Group Companies in the last six taxable years. The Group Companies have not waived any statute of limitations in respect of Taxes that remain outstanding or agreed to any extension of time with respect to a Tax assessment or deficiency that remains outstanding, nor has any request been made in writing for any such waiver or extension that is still pending. No power of attorney with respect to any Taxes of the Group Companies has been executed or filed with any Taxing Authority.

(d) There are no Liens for Taxes (other than Permitted Liens) on any assets of the Group Companies.

(e) There are no Tax Sharing Agreements, Tax indemnity agreements or similar arrangements with respect to or involving the Group Companies (other than any customary agreements entered into in the ordinary course of business and not primarily related to Taxes).

(f) No Group Company has been a member of an affiliated group filing a consolidated federal income Tax Return or any similar group for federal, state, local or foreign Tax purposes (other than a group the common parent of which is a Group Company). No Group Company has any liability for the Taxes of any Person (other than Taxes of the Group Companies) (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor or (iii) by Contract (other than Contracts entered into by the Group Companies in the ordinary course of business the primary purpose of which is not related to Taxes).

(g) The Group Companies have withheld and timely and properly paid all Taxes required to have been withheld and paid by it in connection with amounts paid or owing to any employee, former employee, partner, independent contractor, creditor, Securityholder, member, Affiliate, customer, supplier or other Person, including any state or local Taxes required to be withheld with respect to any distribution or any allocation of taxable income to any equityholder, and all Tax Returns, including IRS Forms W-2 and 1099, required with respect thereto have been properly completed and timely filed. Each Person providing services to the Group Companies has been properly classified as an employee or independent contractor, as the case may be, for all Tax purposes.

(h) Except as set forth on Schedule 3.22(h), no Group Company (i) is a partner for Tax purposes with respect to any joint venture, partnership or other arrangement or Contract which is treated as a partnership for Tax purposes, (ii) is a shareholder of a “controlled foreign corporation” as defined in Section 957 of the Code, (iii) is a “personal holding company” as defined in Section 542 of the Code and (iv) is a shareholder of a “passive foreign investment company” within the meaning of Section 1297 of the Code.

(i) Except as set forth on Schedule 3.22(i), no Group Company has had a permanent establishment (within the meaning of an applicable Tax treaty), or otherwise become subject to Tax in a country other than the United States.

(j) The Group Companies use the accrual method of accounting for all income Tax purposes.

(k) No Group Company has never elected to be treated as an “S corporation” within the meaning of Section 1361(a)(1) of the Code.

(l) No Group Company has entered into any transaction that is a “reportable transaction” as defined in Treasury Regulations Sections 1.6011-4, or any other transaction requiring disclosure under analogous provisions of state, local or foreign law.

(m) Except as set forth on Schedule 3.22(m), the Group Companies will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting made on or prior to the Closing Date, including under Section 481 of the Code (or any corresponding or similar provision of state, local, foreign or other Applicable Law); (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, foreign or other Applicable Law) entered into on or prior to the Closing Date; (iii) deferred intercompany gain or any excess loss account described in the Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, foreign or other Applicable Law) existing on or prior to the Closing Date; (iv) installment sale or open transaction disposition made on or prior to the Closing Date, or application of the completed contract method of accounting to any transaction occurring on or prior to the Closing Date; (v) prepaid amount, advanced payment or deferred revenue received or accrued on or prior to the Closing Date; (vi) election under Section 108(i) of the Code or Section 965 of the Code (or any corresponding or similar provision of state, local, foreign or other Applicable Law) made on or prior to the Closing Date; (vii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (viii) debt instrument that was acquired on or prior to the Closing Date with “original issue discount” as defined in Section 1273(a) of the Code or is subject to the rules set forth in Section 1276 of the Code; or (ix) application of Section 951, 951A, 956 or 965 of the Code to any interest held in a “deferred foreign income corporation” or in a “controlled foreign corporation” (as respectively defined in Sections 965 and 957 of the Code) with respect to income earned or recognized, payments received or ownership of “United States property” (as defined in Section 956 of the Code) in each case on or prior to the Closing Date.

(n) For purposes of this Section 3.22, the term “Group Company(ies)” shall include any entity which is, in whole or in part, a predecessor of any Group Company (including any Subsidiary of any Group Company).

Any other provision of this Agreement to the contrary notwithstanding, no breach of or inaccuracy in the representations set forth in this Section 3.22 (other than paragraphs (e), (f), (h), (i), (l) or (m)) shall cause any Securityholder to be liable for any Taxes that arise in a tax period (or portion thereof) commencing after the Closing Date.

Section 3.23 Certain Business Practices.

(a) No Group Company or employee nor, to the Knowledge of the Company, any agent or other Person acting on behalf of any Group Company has, directly or indirectly, in violation of any Applicable Law related to anti-corruption or bribery, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made any unlawful payment to foreign or domestic government officials or government employees or to foreign or domestic political parties or campaigns from corporate funds, violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment. No Group Company has any pending or anticipated disclosures to any Governmental Authority for (i) violations or (ii) facts or circumstances that would constitute a violation, in each case, of any Applicable Law related to anti-corruption or bribery. There have been no violations of Applicable Laws related to anti-corruption or bribery that have been discovered by or brought to the attention of the Group Companies during the past five (5) years.

(b) Each Group Company is, and has been for the past five (5) years, in compliance in all material respects with all United States and other Applicable Laws (except to the extent prohibited or subject to penalty under United States laws) relating to import and export controls and economic sanctions and, for the past five (5) years: (i) no Group Company has violated any such Applicable Laws in any material respect or made a voluntary or directed disclosure or entered into a settlement, consent agreement, plea agreement or deferred prosecution agreement with respect to any violations or potential violations of such Applicable Laws; (ii) no Group Company is the subject of, and has not been the subject of, a conviction, indictment, penalty proceeding, settled claim for alleged or actual underpayment of duties, fees or other amounts, suspension of export privileges, government sanction or other enforcement action with respect any violations or potential violations of such Applicable Laws; (iii) to the Knowledge of the Company, no Group Company is the subject of, and has not been the subject of, an investigation, inquiry, audit, compliance assessment, focused assessment, or claim for alleged or actual underpayment of duties, fees or other amounts with respect any violations or potential violations of such Applicable Laws and (iv) no Group Company has made or provided any false statement or omission to any Governmental Authority or to any customer in connection with importation or exportation of merchandise (including software), technical data or services, including valuation, classification, duty treatment, eligibility for favorable duty rates or other special treatment, country-of-origin declaration or marking, export licensing, or any other matter arising out of Applicable Laws pertaining to import and export controls, economic sanctions or anti-boycott regulations.

(c) Except as set forth on Schedule 3.23(c), no Group Company has availed itself of, and does not expect to avail itself of, nor does any Group Company have outstanding Liabilities under, the U.S. Coronavirus Aid, Relief, and Economic Security Act (including, without limitation, pursuant to Sections 1101 and 1106 (i.e., the Paycheck Protection Program) of, or other similar programs, under such act) (the “CARES Act”), or any similar federal, state or local Applicable Law (excluding, for the avoidance of doubt, any tax provisions of general applicability such as Sections 2301 through 2308 of the CARES Act).

Section 3.24 Major Customers and Vendors.

(a) Customers. Schedule 3.24(a) sets forth a true, complete and correct list of, and identifies the revenues received from, each of the top 20 customers of the Group Companies (based on revenues) for each of (i) the calendar year 2018, (ii) the calendar year 2019, and (iii) January 1, 2020 through May 31, 2020 (such customers, collectively, the “Major Customers”). No Group Company has received any written notice or, to the Knowledge of the Company, oral notice from any Major Customer indicating, and has reason to believe, that such Major Customer (A) may terminate and/or not renew any of its agreement(s) with such Group Company, (B) may file for bankruptcy or cessation of business or (C) otherwise may change other material terms of its business with such Group Company in a material and adverse way. Except as set forth on the Current Balance Sheet, there are no outstanding credits or discounts owed to any customer of the Group Companies.

(b) Vendors. Schedule 3.24(b) sets forth a true, complete and correct list of, and identifies the dollar amount spent with respect to, each of the ten (10) vendors that accounted for the largest dollar volume of purchases by the Group Companies, taken as a whole, during each of (i) the calendar year 2018, (ii) the calendar year 2019, and (iii) January 1, 2020 through May 31, 2020 (such vendors, collectively, the “Major Vendors”). No Group Company has received any written notice from any Major Vendor indicating, and has reason to believe, that such Major Vendor (A) may terminate and/or not renew any of its agreement(s) with such Group Company or (B) otherwise may change other material terms of its business with the Group Companies in a material and adverse way.

(c) Since January 1, 2018, there have been no material actions, suits, claims, disputes or proceedings between any Group Company, on the one hand, and a Major Customer or Major Vendor, on the other hand.

Section 3.25 Transactions with Related Persons. Except as set forth on Schedule 3.25, no Securityholder nor any current or former Related Person of any Securityholder (a) has any interest in any property (real or personal, tangible or intangible) or Contract of any Group Company or used in or pertaining to the Business or (b) provides material services to any Group Company.

Section 3.26 Effect of Transaction. No creditor, employee, client, customer or other Person having a material business relationship with the Group Companies has changed, or informed any Group Company in writing that such Person intends to change, such relationship because of the purchase and sale of the Company or the execution and delivery of this Agreement

and the Ancillary Agreements or consummation of the transactions contemplated hereby or thereby.

Section 3.27 Exclusive Representations. Except for the representations and warranties contained in Article 3 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement), any Letter of Transmittal, or the Written Consent, neither the Company nor any Securityholder makes any other express or implied representation or warranty with respect to the Group Companies, and each of Parent and Merger Sub acknowledges, represents and warrants that (a) it has not relied on any representation, warranty, statement or information whatsoever regarding the subject matter of this Agreement, express or implied, made or provided by or on behalf of the Company or any Securityholder, except for the representations and warranties contained in Article 3 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement), any Letter of Transmittal, or the Written Consent, and (b) waives any right that Parent or Merger Sub may have against the Company or any Securityholder with respect to any inaccuracy in any such representation, warranty statement or information or with respect to any omission or concealment on the part of the Company or any Securityholder or of any potentially material information, except for the representations and warranties contained in Article 3 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement), any Letter of Transmittal, or the Written Consent, and any omission or concealment with respect thereto. Without limitation as to the foregoing sentence, except as expressly set forth in Article 3, the Company hereby disclaims any and all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Parent or its Affiliates or their respective representatives (including any opinion, information, projection, or advice that may have been or may be provided to Parent by any director, officer, employee, agent, consultant, or other representative of the Company, the Securityholders or any of their respective Affiliates). Except as expressly set forth in Article 3 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement), the Company makes no representation or warranty to Parent or Merger Sub regarding the probable success or future profitability of the Group Companies. Except as expressly set forth in this Agreement, the condition of the assets of the Group Companies shall be “as is” and “where is” and the Company makes no warranty of merchantability, suitability, fitness for a particular purpose or quality with respect to any of the tangible assets of the Group Companies or as to the condition or workmanship thereof or the absence of any defects therein, whether latent or patent. It is understood that any Due Diligence Materials made available to Parent or its Affiliates or their respective representatives do not, directly or indirectly, and shall not be deemed to, directly or indirectly, contain representations or warranties of the Company or its Affiliates or their respective representatives. Notwithstanding the foregoing, this Section 3.27 shall not limit the rights of Parent and Merger Sub with respect to claims based on Fraud.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Section 4.01 Organization and Power. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and any Ancillary Agreements to which it is a party, and to perform its obligations hereunder and thereunder. Merger Sub is a corporation duly

organized, validly existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and any Ancillary Agreements to which it is a party, and to perform its obligations hereunder and thereunder. There is no pending, or to the Knowledge of Parent, threatened, action for the dissolution, liquidation or insolvency of either Parent or Merger Sub.

Section 4.02 Authorization. The execution, delivery and performance of this Agreement and any Ancillary Agreements to which it is a party by each of Parent and Merger Sub and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action (including all shareholder approvals), and no other proceedings on their part are necessary to authorize the execution, delivery or performance of this Agreement or any Ancillary Agreements to which they are a party. This Agreement and any Ancillary Agreements to which they are party have been duly executed and delivered by Parent and Merger Sub and, assuming that this Agreement and such Ancillary Agreements are a valid and binding obligation of the Company (or other applicable counterparty), this Agreement and such Ancillary Agreements constitute a valid and binding obligation of Parent and Merger Sub, enforceable in accordance with their terms, except as enforceability may be limited by Applicable Laws relating to bankruptcy, other similar Applicable Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

Section 4.03 Purpose. Merger Sub is a newly organized corporation, formed solely for the purpose of engaging in the transactions contemplated by this Agreement. Merger Sub has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated by this Agreement. Merger Sub is a wholly owned Subsidiary of Parent.

Section 4.04 Noncontravention. The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and each Ancillary Agreement to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate the organizational documents or resolutions adopted by the shareholders or board of directors of Parent or Merger Sub, as the case may be, (b) with or without the passage of time or the giving of notice or both, conflict with or result in a material breach of, or default under, or require any consent or approval under, or result in the creation of any Lien upon any property or assets of Parent or Merger Sub pursuant to any Contract to which Parent or Merger Sub is a party or by which Parent or Merger Sub or their respective properties may be bound or affected, or (c) assuming compliance with the matters referred to in Section 4.05, violate any material Applicable Law.

Section 4.05 Consents and Approvals. The execution, delivery and performance by Parent and Merger Sub of this Agreement and the consummation of the transactions contemplated hereby by Parent and Merger Sub require no action or consent by or in respect of, or filing with, any third party or Governmental Authority except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware.

Section 4.06 Litigation. There is no action, suit, investigation or proceeding pending against, or to the Knowledge of Parent threatened against or affecting, Parent or Merger Sub before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

Section 4.07 Finders' Fees. There is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of Parent who is entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 4.08 Investigation by Parent and Merger Sub; No Other Representations; Exclusive Representations.

(a) Each of Parent and Merger Sub is an informed and sophisticated Person, and has engaged expert advisors experienced in the evaluation and acquisition of companies such as the Company as contemplated hereunder. Parent, Merger Sub and their respective representatives have undertaken such investigation and have been provided with and have evaluated such documents and information as each of them have deemed necessary to enable them to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the other Ancillary Agreements to which they are party and the consummation of the transactions contemplated hereby and thereby. In making their determination to proceed with such transactions, Parent and Merger Sub have relied solely on the results of their and their respective representatives' own independent investigation and the representations and warranties of the Company set forth in this Agreement and the other Ancillary Agreements.

(b) In connection with the investigation by Parent and Merger Sub of the Company, Parent, Merger Sub and their respective representatives have received and, after the date hereof but prior to the Closing, may receive from the Company or any of its representatives certain projections, budgets, forward looking statements and other forecasts. Each of Parent and Merger Sub acknowledges that there are uncertainties inherent in attempting to make such projections, budgets, forward looking statements and other forecasts, that Parent, Merger Sub and their respective representative are familiar with such uncertainties, that Parent, Merger Sub and their respective representatives are taking full responsibility for making their own evaluation of the adequacy and accuracy of all projections, budgets, forward looking statements and other forecasts so furnished to them (including the reasonableness of the assumptions underlying such projections, budgets, forward looking statements and other forecasts), and that Parent and Merger Sub have not relied upon, are not relying upon and will not rely upon any such projections, budgets, forward looking statements or other forecasts or any other materials, documents or information (including those provided in the data room made available to Parent on behalf of the Company, confidential information memoranda or similar materials, or management presentations in connection with the transactions contemplated herein) made available to Parent, Merger Sub and their Representatives and Affiliates by the Company or any of its representatives (collectively, the "Due Diligence Materials"), and Parent and Merger Sub shall have no claim against any Person with respect thereto, except pursuant to the terms and conditions of this Agreement or any other Ancillary Agreement.

(c) Except for the representations and warranties contained in Article 4 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement), neither Parent nor Merger Sub makes any other express or implied representation or warranty with respect to Parent or Merger Sub, and the Company acknowledges, represents and warrants that (i) it has not relied on any representation, warranty, statement or information whatsoever regarding the subject matter of this Agreement, express or implied, made or provided

by or on behalf of Parent or Merger Sub, except for the representations and warranties contained in Article 4 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement), and (ii) waives any right that it may have against Parent or Merger Sub with respect to any inaccuracy in any such representation, warranty statement or information or with respect to any omission or concealment on the part of Parent or Merger Sub or of any potentially material information, except for the representations and warranties contained in Article 4 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement). Without limitation as to the foregoing sentence, except as expressly set forth in Article 4, Parent and Merger Sub hereby disclaim any and all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to the Company, its Affiliates or any Securityholder, or their respective representatives (including any opinion, information, projection, or advice that may have been or may be provided to such Persons by any director, officer, employee, agent, consultant, or other representative of Parent, Merger Sub or any of their respective Affiliates). Except as expressly set forth in Article 4 (as modified by the Schedules hereto, as supplemented and amended to the extent permitted by this Agreement), neither Parent nor Merger Sub makes any representation or warranty to the Company regarding the probable success or future profitability of Parent or the Surviving Company. It is understood that any materials made available to the Company, the Securityholders or any of their respective Affiliates or their respective representatives do not, directly or indirectly, and shall not be deemed to, directly or indirectly, contain representations or warranties of Parent, Merger Sub or their respective Affiliates or their respective representatives. Notwithstanding the foregoing, this Section 4.08(c) shall not limit the rights of the Securityholders with respect to claims based on Fraud.

Section 4.09 Solvency. Assuming (a) the accuracy of the representations and warranties set forth in Article 3 in all material respects, and (b) the satisfaction of the conditions to Parent's obligations to consummate the transactions set forth herein, and (c) that immediately prior to the Closing, the Group Companies on a consolidated basis are Solvent, then immediately after giving effect to the transactions contemplated by this Agreement (including any financing in connection with the Closing), Parent and Group Companies on a consolidated basis will be Solvent.

ARTICLE 5 CERTAIN COVENANTS AND AGREEMENTS

Section 5.01 Access to Books and Records. Following the Closing and until the sixth (6th) anniversary of the Closing Date, Parent shall, and shall cause the Surviving Company to, retain all books and records with respect to the Group Companies in existence on the Closing Date and to grant to the Representative and its representatives during regular business hours and upon reasonable advance notice, the right, at the expense of the Representative, (a) to inspect and copy the books and records, (b) to have personnel made available to them or (c) to otherwise cooperate to the extent reasonably requested by the Representative, including in connection with (i) preparing and filing Tax Returns and/or any Tax inquiry, audit, investigation or dispute, or (ii) any litigation, audit, dispute, claim or investigation. No books and records shall be destroyed by Parent, and Parent shall not permit the Surviving Company to destroy any books and records, outside of the ordinary course of business, without first advising the Representative in writing and giving the Representative a reasonable opportunity to obtain possession thereof at the Representative's expense.

Section 5.02 Further Assurances. Subject to the terms and conditions herein provided, after the Closing Date, the Company and Parent shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable to make effective as promptly as practicable the transactions contemplated by this Agreement. The parties hereto acknowledge and agree that nothing contained in this Section 5.02 shall limit, expand or otherwise modify in any way any efforts standard explicitly applicable to any of their respective obligations under this Agreement.

Section 5.03 Payoff Letters and Lien Releases. The Company shall have delivered to Parent customary payoff letters in connection with the repayment of the indebtedness set forth on Schedule 5.03 (the “Existing Indebtedness”) and made arrangements for the holders of such Existing Indebtedness to deliver, subject to the receipt of the applicable payoff amounts, customary Lien releases (if applicable) to Parent as soon as practicable after the Closing.

Section 5.04 Publicity. The Company shall not, and shall cause its Affiliates, Securityholders and representatives to not, directly or indirectly, issue any press release or other public statement relating to the terms of this Agreement or the transactions contemplated hereby or use Parent’s name or refer to Parent directly or indirectly in connection with Parent’s relationship with the Company in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of Parent, unless required by Applicable Law. Notwithstanding anything herein, Parent may issue such press releases or make such other public statements regarding this Agreement or the transactions contemplated hereby as Parent may, in its reasonable discretion, determine after good faith consultation with the Company; *provided, however*, that Parent may make any public disclosure as required by the United States Securities and Exchange Commission or the rules and requirements of any applicable stock exchange in Parent’s sole discretion without prior consultation with any other party.

Section 5.05 Key Employee Retention Agreements.

(a) At the Closing, Parent shall enter into individual incentive cash retention agreements with certain key employees (the “Key Employees”), with an aggregate pool of \$2,000,000 for the purpose of retaining such Key Employees (the “Retention Agreements”). The identity of the Key Employees, the specific allocations, and the timing of and eligibility for the payments detailed in the Retention Agreements shall be determined by Parent in consultation with the Company prior to the Closing.

(b) Parent shall, and shall cause the Group Companies to, as of the Closing Date and for a period of at least one (1) year thereafter, provide each retained employee of the Group Companies who remains employed with the Group Companies substantially similar base wages, annual base salary and annual bonus potential as provided to such employee immediately prior to the Closing Date. Nothing in this Section 5.05(b) shall obligate Parent or any Group Company to continue the employment of any such employee for any specific period. Parent shall, and shall cause the Group Companies to, as of the Closing Date and for a period of at least one (1) year thereafter, provide each retained employee with employee benefits (other than any equity based compensation) that are no less favorable in the aggregate to the benefits provided to such employee immediately prior to the Closing Date under the Employee Plans. Notwithstanding the foregoing,

and excepting an annual bonus paid in the ordinary course of business consistent with past practice, any other bonus including discretionary bonuses of the type listed on Schedule 3.20(a), item 11, shall not be considered for purposes of this Section 5.05(b).

(c) Nothing contained in this Agreement, express or implied, shall (i) be construed to grant any current or former employee of any Group Company or any of their respective Affiliates a right to continued employment by, or to receive any payment or benefits from, the Group Companies or any of their Affiliates, or through any Employee Plan or other benefit plan that increases or expands such person's rights beyond what is provided by terms of such plan, (ii) constitute an amendment to any Employee Plan or other benefit plan, (iii) create any third party beneficiary rights or (iv) inure to the benefit of or be enforceable by any employee, director or consultant of the Group Companies, Parent, any of their respective Affiliates, or any entity or any person representing the interest of any employees, directors or consultants or of any person whose rights are derivative of any such employee (including a family member or estate of the employee).

Section 5.06 Directors and Officers.

(a) During the period commencing on the Closing Date and ending on the sixth (6th) anniversary of the Closing Date, Parent will fulfill the obligations of the Company and its Subsidiaries pursuant to any indemnification agreements (to the extent a copy of the same has been made available to Parent) between the Company or such Subsidiary and any of their respective current or former directors, managers, officers or employees (each, an "D&O Indemnified Party" and collectively, the "D&O Indemnified Parties") for any acts or omissions by such D&O Indemnified Parties occurring prior to the Closing. In addition, during the period commencing on the Closing Date and ending on the sixth (6th) anniversary of the Closing Date, Parent will cause the organizational documents of the Group Companies to contain provisions with respect to indemnification, exculpation and the advancement of expenses that are at least as favorable as the indemnification, exculpation and advancement of expenses provisions set forth in the organizational documents of the Group Companies as of the date of this Agreement.

(b) The covenants contained in this Section 5.06 are intended to be for the benefit of, and shall be enforceable by, each of the D&O Indemnified Parties and their respective heirs and legal representatives and shall not be deemed exclusive of any other rights to which a D&O Indemnified Party is entitled, whether pursuant to Applicable Law, Contract or otherwise. In the event that Parent or the Surviving Company or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, Parent shall take all necessary action so that the successors or assigns of Parent or the Surviving Company, as the case may be, shall succeed to the obligations set forth in this Section 5.06.

ARTICLE 6 CERTAIN TAX MATTERS

Section 6.01 Tax Returns. Parent shall prepare, or cause to be prepared, and file, or cause to be filed, all Tax Returns of the Group Companies (x) for taxable periods ending on or

before the Closing Date that are first due (taking into account any extension) after the Closing Date and (y) for Straddle Periods that are first due (taking into account any extension) after the Closing Date (together, the “Parent Prepared Returns”). Each Parent Prepared Return shall be prepared on a basis consistent with the last previous similar Tax Return except as required by Applicable Law and on a basis consistent with this Agreement. In the event that any Parent Prepared Return could reasonably be expected to form the basis for a claim of indemnification against the Securityholders pursuant to this Agreement, Parent will submit such Parent Prepared Return to the Representative for review and comment at least 20 days prior to the due date (taking into account any extension) for filing such Parent Prepared Return (or, if such due date is within sixty (60) days following the Closing Date, as promptly as reasonably practicable following the Closing Date), and Parent will consider in good faith any changes reasonably requested by the Representative with respect to such Parent Prepared Return prior to filing. The Representative will cause the Securityholders to pay to Parent the portion of any Taxes on a Parent Prepared Return that are Indemnified Taxes, except to the extent such Taxes were specifically reflected in the final calculation of Indebtedness under Section 2.07. For purposes of the preceding sentence, Taxes shall be allocated in the manner set forth in Section 6.04. Parent shall notify the Representative of the amount of Indemnified Taxes shown on a Parent Prepared Return as soon as reasonably practicable, and each such payment by the Securityholders will occur no later than five (5) Business Days prior to the date on which such Tax is due to be paid to the applicable Taxing Authority.

Section 6.02 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value-added and other such Taxes and fees (including any penalties and interest) incurred in connection with transactions contemplated by this Agreement (including any real property transfer Tax and any similar Tax) (collectively, “Transfer Taxes”) shall be borne 50% by Parent on the one hand and 50% by the Securityholders (jointly and severally) on the other hand. Each party will reimburse the other party for any Transfer Taxes for which such party is liable pursuant to this Section 6.02 but which are remitted by the other party. Representative hereby agrees to file, or cause to be filed, in a timely manner all necessary documents (including, but not limited to, all Tax Returns) with respect to all such Transfer Taxes. If requested by Parent, Representative shall provide Parent with evidence reasonably satisfactory to Parent that the Transfer Taxes have been paid by Representative. Parent will cooperate in filing such forms and documents as may be necessary to permit any such Transfer Tax to be assessed and paid on or prior to the Closing Date in accordance with any available pre-sale filing procedure, and to obtain any exemption or refund of any such Transfer Tax. If required by Applicable Law, Parent will, and will cause their applicable Affiliates to, join in the execution of any such Tax Returns and other documentation.

Section 6.03 Cooperation on Tax Matters. Parent and the Representative shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the preparation and filing of any Tax Return, any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party’s request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder (with the requesting party bearing any reasonable expenses with respect thereto). Parent and the Representative agree (a) to retain all books and records with respect to Tax matters pertinent to the Group Companies relating to any Pre-Closing Tax Period for a period of at least seven (7) years following the Closing Date, and to abide by all record retention agreements entered into with any Taxing Authority and

(b) to deliver or make available to each other, within sixty (60) calendar days after the Closing Date, copies of all such books and records.

Section 6.04 Straddle Period Taxes. With respect to any Straddle Period, the portion of any Tax that relates to the Pre-Closing Tax Period shall (a) in the case of any Property Taxes, be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period, and (b) in the case of any other Tax, be deemed equal to the amount which would be payable if the relevant Straddle Period ended on the Closing Date; *provided* that in determining such amount, exemptions, allowances or deductions that are calculated on a periodic basis, such as the deduction for depreciation, shall be taken into account on a pro-rated basis in the manner described in clause (a) above; *provided further*, that for purposes of clause (b) above, any Taxes attributable to transactions outside the ordinary course of business after the Closing on the Closing Date shall relate to the portion of the Straddle Period commencing on or after the Closing Date.

Section 6.05 Tax Proceedings.

(a) Parent and the Company, on the one hand, and the Representative, on the other hand, shall promptly notify each other upon receipt by such party of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes of the Group Companies in respect of which indemnification may be sought pursuant to Article 7 (any such inquiry, claim, assessment, audit or similar event, a “Tax Proceeding”). Any failure to so notify the other party of any Tax Proceeding shall not relieve such other party of any liability with respect to such Tax Proceeding except to the extent such party was actually prejudiced as a result thereof.

(b) The Representative shall control the contest or resolution of any Tax Proceeding (i) related solely to Taxes of the Group Companies for tax periods ending on or before the Closing Date, and (ii) that could not reasonably be expected to adversely affect any of the Group Companies, Parent, or any Affiliate of any of the foregoing with respect to any taxable period ending after the Closing Date (as determined by Parent in good faith) *provided* that (x) the Representative shall keep Parent informed of the progress of any such Tax Proceeding (including the prompt provision to Parent of all material correspondence, pleadings, protests, briefs and other documents pertaining to such Tax Proceeding), (y) the Representative shall obtain the prior written consent of Parent (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a Tax Proceeding, and (z) Parent shall be entitled to participate in the defense of such Tax Proceeding and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Parent. Parent shall control the contest or resolution of any other Tax Proceeding; *provided* that if the Tax Proceeding relates to a Tax liability for which Securityholders would be required to indemnify the Parent Indemnified Parties pursuant to Section 7.02(a)(ii), (A) Parent shall keep the Representative informed of the progress of any such Tax Proceeding (including the prompt provision to the Representative of all material correspondence, pleadings, protests, briefs and other documents pertaining to such Tax Proceeding), (B) Parent shall obtain the prior written consent of the Representative (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a Tax Proceeding, and (C) the Representative shall be entitled to participate in the defense of such Tax Proceeding and to employ counsel of its choice for such purpose, the fees and expenses of which

separate counsel shall be borne solely by the Representative. The provisions of this Section 6.05, rather than those of Section 7.05 shall apply with respect to any Tax Proceeding.

Section 6.06 Purchase Price Adjustment. Any amount paid by the Securityholders or Parent under Section 2.08, Section 2.09, Article 6 or Article 7 shall be treated as an adjustment to the Final Merger Consideration (including by Parent and the Securityholders on their respective Tax Returns) for Tax purposes to the extent permitted under Applicable Law.

Section 6.07 Tax Sharing Agreements. All Tax Sharing Agreements (other than any customary agreements entered into in the ordinary course of business and not primarily related to Taxes) with respect to or involving the Group Companies shall be terminated as of the Closing Date and, after the Closing Date, the Group Companies shall not be bound thereby or have any liability thereunder.

Section 6.08 Tax Reporting. Any Transaction Tax Deductions of the Group Companies, to the extent properly allocable to the Pre-Closing Tax Period in accordance with Applicable Law and to the extent such allocation is not reasonably likely to result in the imposition of penalties on any Person for any taxable period, shall be allocable solely to the Pre-Closing Tax Period (or, in connection with any Straddle Period, the portion of such period ending before the Closing Date). In connection therewith, the parties agree that the Group Companies shall make an election under Revenue Procedure 2011-29 to deduct seventy percent (70%) of any Transaction Tax Deductions that are success-based fees as defined in Treasury Regulation Section 1.263(a)-5(f). In addition, except as provided above in this Section 6.08 and except as required by Applicable Law, the parties agree (i) to treat any gains, income, deductions, losses, or other items realized by the Group Companies for income Tax purposes with respect to any transaction outside the ordinary course of business after the Closing on the Closing Date as occurring on the day immediately following the Closing Date and apply the “next day rule” under Treasury Regulation Section 1.1502-76(b)(1)(iv)(B) to such items, (ii) that no election under Code Section 338(g) or Section 336(e) shall be made with respect to the Merger, and (iii) that no election shall be made under Treasury Regulations Section 1.1502-76(b)(2) (or any similar provision of state, local, or non-U.S. law) to ratably allocate income items incurred by the Group Companies in the year containing the Closing Date.

Section 6.09 Parent Tax Actions. Except (i) as required by Applicable Law or (ii) to the extent necessary or advisable to implement the provisions of Section 6.10 or Section 6.11, Parent shall not, and shall not cause any Group Company to (A) file, amend or modify a Tax Return of the Group Companies, (B) amend or revoke any Tax election of the Group Companies, (C) extend the applicable statute of limitations for any Taxes or Tax Return of the Group Companies, (D) take any affirmative action to surrender any right to claim a refund of Taxes relating to the Group Companies, or (E) make a voluntary disclosure to a Governmental Authority in each case, for a Pre-Closing Tax Period, without the prior written consent of Representative, which consent will not be unreasonably withheld, delayed or conditioned.

Section 6.10 Refunds and Tax Benefits.

(a) Any Tax refunds that are (i) actually received by Parent or the Group Companies within two (2) years of the Closing Date that relate to any Pre-Closing Tax Period or

(ii) refunds of income Taxes claimed on original (as opposed to amended) Tax Returns in respect of the Group Companies' 2020 taxable year ending on the Closing Date (but, in each case, in any event excluding any Tax refunds (x) that are included in the final calculation of Closing Working Capital, or (y) that arise as the result of a carryback of a loss or other Tax benefit attributable to a Tax period (or portion thereof) beginning after the Closing Date to a Pre-Closing Tax Period), shall be for the account of the Securityholders, and Parent shall pay over to the Representative (on behalf of the Securityholders) any such refund (less any Taxes of Parent and its Affiliates (including the Group Companies) attributable to the receipt of any such refund, and less any out-of-pocket costs and expenses incurred by Parent and its Affiliates (including the Group Companies) in obtaining any such refund). Parent and the Group Companies shall, within two (2) years of the Closing Date, if the Representative so requests, reasonably cooperate with the Representative in filing any amended Tax Returns of the Group Companies with respect to the 2019 taxable year and the 2020 taxable year ending on the Closing Date for obtaining any material Tax refund or claiming any material Tax credits to which the Securityholders are entitled under this Section 6.10; *provided that* the filing of such amended Tax Returns would not reasonably be expected to adversely affect any of the Group Companies, Parent, or any Affiliate of any of the foregoing with respect to any taxable period ending after the Closing Date (as determined by Parent in good faith). In the event any Tax refund paid to the Representative under this Section 6.10 is subsequently disallowed or determined to be an amount less than the amount taken into account to make a payment pursuant to this Section 6.10, by a Governmental Authority, the Securityholders shall promptly return such excess to Parent, the Group Companies, or any of their Affiliates, as applicable, along with any applicable interest and penalties.

(b) All Tax refunds or Tax benefits to the extent not otherwise expressly allocated to the Securityholders under Section 6.10(a) shall be solely for the account of Parent.

Section 6.11 Sales and Use Taxes. Notwithstanding anything to the contrary in this Agreement (including Section 6.01), following the Closing, Parent shall have the sole right to cause the Company to (i) apply for sales tax voluntary disclosure agreements, initiatives and similar processes (“VDAs”) with the appropriate Taxing Authorities in Arizona, Massachusetts and Texas, with the assistance of KPMG LLP or other U.S. national independent accounting firm, (ii) file any and all Company Sales Tax Returns required to be filed by the Company in connection with such VDAs, and (iii) pay any Pre-Closing Sales Taxes required to be paid in connection with such VDAs or Company Sales Tax Returns. Each party shall cooperate to use its commercially reasonable efforts to cause the VDAs to be completed in a cost-effective and expedient manner, and shall not unreasonably delay or postpone the completion of such VDAs. At each party's reasonable request, the other party shall provide status reports regarding the progress of any such remedial activity regarding the VDAs. Parent shall in good faith work with and consider the reasonable comments submitted to Parent by Representative; *provided that* Parent shall control any ultimate decisions that are to be made with respect to any such VDA. None of the indemnification limitations in Section 7.03 shall apply to any of the VDAs. For the avoidance of doubt, nothing in this Section 6.11 shall limit the Securityholders' liability, and Parent's right to indemnification, for any Taxes that are described in Section 7.02 of this Agreement.

Section 6.12 Exclusivity. To the extent any Tax-related provision of this Article 6 conflicts with any provision of Article 7, this Article 6 shall control.

ARTICLE 7 SURVIVAL; INDEMNIFICATION

Section 7.01 Survival of Representations and Covenants. The representations and warranties of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto shall survive the Closing and shall expire on the date that is twelve (12) months after the Closing Date; *provided, however*, that (a) (i) the representations and warranties in Section 3.01(a) (Organization and Power), Section 3.02 (Company Authorization), Section 3.04 (Noncontravention); Section 3.05 (Capitalization), Section 3.17 (Finders' Fees) and Section 3.22 (Tax Matters) (collectively, the "Company Fundamental Representations"), and (ii) the representations and warranties in Section 4.01 (Organization and Power), Section 4.02 (Authorization), Section 4.03 (Purpose) and Section 4.07 (Finders' Fees) (the "Parent Fundamental Representations") shall survive for the longest period of time permitted by the statute of limitations relating to a breach of contract under Delaware law and (b) the representations and warranties in Section 3.13(c) (Ownership), Section 3.13(e) (Registration; Validity), and Section 3.13(i) (Non-Infringement) shall survive until the second (2nd) anniversary of the Closing. The covenants and agreements of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing indefinitely or for the shorter period explicitly specified therein; *provided, however*, that claims pursuant to Section 7.02(a)(vi) shall survive until the one (1)-year anniversary of the Closing. Notwithstanding the preceding sentences, any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the applicable Indemnifying Party prior to such termination.

Section 7.02 Right to Indemnification.

(a) Indemnification of the Parent Indemnified Parties. Subject to the limitations, conditions and procedures set forth in this Article 7, from and after the Closing, each Parent Indemnified Party shall be entitled to be indemnified by the Securityholders, severally, but not jointly in accordance with their respective Pro Rata Shares, against the following; *provided, however*, the indemnification obligations set forth in Section 7.02(a)(vii) and Section 7.02(a)(viii), shall be joint and several obligations of the Securityholders:

(i) any Damages incurred or suffered by such Parent Indemnified Party as result of or arising from (A) any breach of any representation or warranty set forth in Article 3, (B) any breach of any covenant or agreement of the Company or the Securityholders set forth in this Agreement or any Ancillary Agreement (*provided* that in the case that such breach is by a Securityholder, solely in his, her or its capacity as a Securityholder, a claim for indemnification under this Section 7.02(a)(i)(B) may only be made solely against such Securityholder) or (C) any Securityholder Claims;

(ii) any Indemnified Taxes (except to the extent such Taxes were reflected through the Tax Liability Amount in the final determination of Indebtedness under Section 2.07);

(iii) any inaccuracies in the Allocation Schedule;

(iv) any Transaction Expenses or Indebtedness (other than Indemnified Taxes) owed by the Company to the extent not paid in full prior to or at the Closing or included in the calculation of the Closing Merger Consideration pursuant to Section 2.06 or Section 2.07;

(v) any IP Claim;

(vi) any Damages incurred or suffered by such Parent Indemnified Party as a result of or arising from any actions, suits, claims, disputes or proceedings with respect to the NinePlusIT Dispute;

(vii) any costs, fees and expenses arising out of or relating to the rebranding of the Percipient product identified under Schedule 3.13(a); and

(viii) any Damages incurred or suffered by such Parent Indemnified Party as a result of or arising from any actions, suits, claims, disputes or proceedings with Percipient, LLC in connection with the use of, or application to register, the “Percipient” mark.

(b) Indemnification of the Securityholder Indemnified Parties. Subject to the limitations, conditions and procedures set forth in this Article 7, from and after the Closing, each Securityholder Indemnified Party shall be entitled to be indemnified by Parent against any Damages incurred or suffered by such Securityholder Indemnified Party as result of or arising from (i) any breach of any representation or warranty set forth in Article 4, or (ii) any breach of any covenant or agreement of Parent set forth in this Agreement or any Ancillary Agreement.

Section 7.03 Limitations on Liability.

(a) The Damages for which the Parent Indemnified Parties have a right to be indemnified pursuant to Section 7.02(a)(i)(A) and Section 7.02(a)(vi) shall not exceed the Primary Holdback Amount; *provided*, for the avoidance of doubt, that (i) the foregoing limitation shall not apply to any indemnification claim with respect to breach of any of the Company Fundamental Representations, or relating to Securityholder Claims, the Damages with respect to which shall not exceed the Merger Consideration actually received by the Securityholders, (ii) the foregoing limitations shall not apply to any IP Claim, the Damages with respect to which shall not exceed the Holdback Amount and (iii) the foregoing limitations shall not apply in the case of a claim for Damages incurred as a result of or arising out of Fraud by any Securityholder. Other than with respect to Fraud, and except as set forth in the preceding sentence, the Damages for which the Parent Indemnified Parties have a right to be indemnified pursuant to Section 7.02(a) shall not exceed the Merger Consideration actually received by the Securityholders. Nothing in this Section 7.03(a) or elsewhere in this Agreement shall affect the parties’ right to specific performance or other similar non-monetary equitable remedy. The parties hereby waive any provision of any Applicable Law to the extent that it would limit or restrict the agreement contained in this Section 7.03(a).

(b) Without limiting the effect of any other limitation contained in this Article 7, Parent Indemnified Parties shall not be entitled to recover for an indemnification claim under Section 7.02(a)(i)(A) unless, until and only to the extent that the Parent Indemnified Parties collectively have suffered or incurred Damages under this Article 7 in excess of \$200,000 (the “Deductible”), whereupon the Parent Indemnified Parties shall be entitled to claim indemnification only for the amount of such Damages in excess of the Deductible. Notwithstanding the foregoing, the Deductible shall not apply to any breach of any Company Fundamental Representation, in the case of any IP Claim or in the case of Fraud.

(c) Without limiting the effect of any other limitation contained in this Article 7, for purposes of determining whether there has been a breach of any representation and warranty, as well as computing the amount of any Damages incurred by an Indemnified Party pursuant to this Article 7 in connection therewith, such amount shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in any representation, warranty or covenant giving rise to the claim for indemnity hereunder.

(d) The amount of any and all Damages under this Article 7 shall be determined net of any amounts actually recovered (“Recovered Amounts”) by an Indemnified Party or any of such Indemnified Party’s Affiliates under or pursuant to any insurance policy pursuant to which or under which such Indemnified Party or such Indemnified Party’s Affiliates is a party or has rights (such Recovered Amounts to be reduced by any increased premiums or costs incurred in connection with or as a result thereof).

(e) For the avoidance of doubt, nothing in this Section 7.03 shall limit any remedy a Parent Indemnified Party may have against the Securityholders in connection with a claim for Damages incurred as a result of or arising out of Fraud by the Company.

Section 7.04 Claims Procedure.

(a) If a Parent Indemnified Party or a Securityholder Indemnified Party determines in good faith that such Person has a bona fide claim for indemnification pursuant to this Article 7 (such Person making a claim, an “Indemnified Party”), such Indemnified Party may deliver to the Representative or Parent, as applicable (such receiving party, the “Indemnifying Party”), a certificate signed by such Person (a “Claim Certificate”):

(i) stating that such Indemnified Party has a claim for indemnification pursuant to this Article 7;

(ii) to the extent possible, contain a good faith non-binding, preliminary estimate of the amount to which such Indemnified Party claims to be entitled to receive, which shall be the amount of Damages such Indemnified Party claims to have so incurred or suffered or could reasonably be expected to incur or suffer (subject to any applicable limitations pursuant to Section 7.03) (the “Estimated Claim Amount”); and

(iii) specifying in reasonable detail (based upon the information then possessed by such Indemnified Party) the material facts known to the Indemnified Party giving rise to such claim.

Subject to this Article 7, no delay in providing such Claim Certificate shall affect an Indemnified Party's rights hereunder, unless (and then only to the extent that) the Indemnifying Party is materially prejudiced thereby.

(b) If the Indemnifying Party, in good faith objects to any claim made in any Claim Certificate, then the Indemnifying Party shall deliver a written notice (a "Claim Dispute Notice") to the other parties during the thirty (30) calendar day period commencing upon receipt by Indemnifying Party of the Claim Certificate. The Claim Dispute Notice shall set forth in reasonable detail the principal basis for the dispute of any claim made in the relevant Claim Certificate. If no Claim Dispute Notice is delivered prior to the expiration of such thirty (30) calendar day period or during a cure period of an additional fifteen (15) calendar days commencing immediately upon receipt from the Indemnified Party of a written notice resending the Claim Dispute Notice (but not prior to the expiration of the initial thirty (30) calendar day period), then each claim for indemnification set forth in such Claim Certificate shall be deemed to have been conclusively determined in the Indemnified Party's favor for purposes of this Article 7 on the terms set forth in the Claim Certificate.

(c) Following delivery of a Claim Dispute Notice, the Indemnified Party and the Indemnifying Party shall then attempt in good faith to resolve any such objections raised in such Claim Dispute Notice.

(d) If the Indemnified Party and the Indemnifying Party agree to a resolution of such objection, then the amount of such settlement shall be paid in accordance with Section 7.04(e). If no such resolution can be reached during the forty five (45) calendar day period following receipt of a given Claim Dispute Notice, then upon the expiration of such forty five (45) calendar day period, either Parent or the Representative may bring suit to resolve the objection in accordance with Section 9.05 and Section 9.06. Judgment upon any award rendered by the trial court may be entered in any court having jurisdiction.

(e) Subject to the applicable limitations set forth in Section 7.03, payments owing from the Securityholders pursuant to this Article 7 shall (A) first, be recoverable from the Primary Holdback Amount, as shall be reduced from time to time to reflect payments, if any, made from the Primary Holdback Amount in accordance with the terms and conditions of this Agreement until the Primary Holdback Amount equals zero; *provided, however*, that if such payments owing from the Securityholders are due to an IP Claim, Parent may, in its sole discretion, satisfy such payment from the IP Holdback Amount and/or the Primary Holdback Amount, and (B) thereafter, shall then be recoverable directly against the Securityholders; *provided, however*, that if such payments owing from the Securityholders are due to an IP Claim, and such claim has not been fully satisfied pursuant to clause (A) above, such remaining payment shall then be recoverable only from the IP Holdback Amount in accordance with the terms and conditions of this Agreement, and Parent Indemnified Parties shall have no direct recourse against Securityholders with respect thereto other than in the case of Fraud. Payments owing from Parent pursuant to this Article 7 shall be recoverable directly against Parent.

Section 7.05 Defense of Third Party Claims.

(a) Except as otherwise provided in Article 6, in the event of the assertion of any actual or possible claim, demand, suit, action, arbitration, investigation, inquiry or proceeding that has been or may be brought or asserted by a third party against an Indemnified Party and that may be subject to indemnification pursuant to this Agreement (each, a “Third Party Claim”), and if the Indemnified Party is a Parent Indemnified Party, Parent shall have the right, at its election, to proceed with the defense of such Third Party Claim on its own; *provided, however*, that if Parent assumes such defense of any such Third Party Claim but fails to diligently prosecute such Third Party Claim as finally determined by a court of competent jurisdiction, Parent shall no longer have the right to conduct and control such defense.

(b) If Parent so proceeds with the defense of any such Third Party Claim in accordance with Section 7.05(a):

(i) The Representative and each Securityholder shall use commercially reasonable efforts to cause each Indemnifying Party to make available to Parent any documents and materials in its possession or control that may be reasonably necessary to the defense of such Third Party Claim;

(ii) Parent shall not have the right to settle, adjust or compromise such Third Party Claim without the consent of the Representative (which consent shall not be unreasonably withheld, conditioned or delayed);

(iii) Parent shall keep the Representative reasonably and promptly informed of the progress of any such Third Party Claim; and

(iv) Parent shall give the Representative prompt notice (and in any event, within thirty (30) days) of the commencement of such Third Party Claim against a Parent Indemnified Party; *provided, however*, that any failure on the part of Parent to so notify the Representative shall not limit any of the obligations of the applicable Indemnifying Party pursuant to this Article 7 (except and only to the extent such failure materially prejudices the defense of such Third Party Claim). The Representative shall be entitled on behalf of the applicable Indemnifying Party, at its sole option and expense, to participate in, but not to determine or conduct, any defense and investigation of such Third Party Claim or settlement negotiations with respect to such Third Party Claim.

(c) The procedure for all Third Party Claims brought or asserted against a Securityholder Indemnified Party or Third Party Claims that Parent does not elect to defend (or may no longer defend) in accordance with Section 7.05(a) shall be as follows:

(i) An Indemnified Party shall provide a Claim Certificate to the Indemnifying Party specifying any claim or demand for which such Indemnified Party has knowledge and as to which it may request indemnification hereunder (*provided* that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless, and then solely to the extent, the Indemnifying Party is materially prejudiced thereby).

(ii) The Indemnifying Party shall have thirty (30) calendar days after receipt of the Claim Certificate to notify the Indemnified Party that it elects to conduct and control such Third Party Claim (the “Election Notice”). If the Indemnifying Party does not give the foregoing Election Notice during such thirty (30)-day period, the Indemnified Party shall have the right (but not the obligation) to defend, contest, settle and compromise such Third Party Claim in the exercise of its reasonable discretion.

(iii) If the Indemnifying Party timely gives the Election Notice, the Indemnifying Party shall have the right to undertake, conduct and control, the defense, conduct and settlement of such Third Party Claim and the Indemnified Party shall cooperate in good faith, including providing reasonable access to records and personnel, to the Indemnifying Party in connection therewith; *provided, however*, that the Indemnifying Party shall not be entitled to assume control of such defense if (A) such Third Party Claim relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (B) such Third Party Claim seeks an injunction or equitable relief against the Indemnified Party, (C) based upon the advice of counsel to the Indemnified Party, a non-waivable conflict of interest exists between the Indemnifying Party and the Indemnified Party, (D) upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend such Third Party Claim, and such ruling is not subject to appeal, or (E) such Third Party Claim is brought by or on behalf of any Governmental Authority or any customer of the business of the Group Companies. Following the assumption of control of the defense of any Third Party Claim by the Indemnifying Party, the Indemnified Party may participate in the defense of such Third Party Claim with its own counsel at its own expense.

(iv) The Indemnifying Party will not agree to any settlement of, or consent to the entry of any judgment or order (other than a judgment or order of dismissal on the merits without costs) arising from any such Third Party Claim without the prior written consent of the Indemnified Party (which consent will not be unreasonably withheld, delayed or conditioned); *provided* that the consent of the Indemnified Party will not be required if (A) the Indemnifying Party agrees in writing to pay any amounts payable pursuant to such settlement, order or judgment, (B) such settlement, order or judgment includes a full, complete and unconditional release of the Indemnified Party and its Affiliates from further Liability, and (C) such settlement, order or judgment does not impose or purport to impose any obligation or restriction on such Indemnified Party or any of its Affiliates or any action or restrictions upon the conduct of any businesses by the Indemnified Party or any of its Affiliates. The Indemnified Party will not agree to any settlement of, or the entry of any judgment or order (other than a judgment or order of dismissal on the merits without costs) arising from, any such Third Party Claim without the prior written consent of the Indemnifying Party (which consent will not be unreasonably withheld, delayed or conditioned).

Section 7.06 No Contribution. No Securityholder shall have, or be entitled to exercise or assert (or attempt to exercise or assert), any right of contribution, right of indemnity or other right or remedy against Parent or any other Person in connection with any indemnification obligation or any other liability to which it may become subject under or in connection with this Agreement (unless Parent shall have consented thereto).

Section 7.07 Release of Holdback Amount.

(a) If, upon the expiration of the Primary Holdback Period, (i) no claim by any Parent Indemnified Party for Damages remains outstanding or the Estimated Claim Amount of any and all claims then outstanding is less than the remaining Primary Holdback Amount, (ii) no required payment from the Primary Holdback Amount pursuant to this Article 7 remains outstanding or any required payments from the Primary Holdback Amount are less than the then-remaining Primary Holdback Amount and (iii) any portion of the Primary Holdback Amount remains undistributed, then within five (5) Business Days after the expiration of the Primary Holdback Period, Parent shall release any remaining Primary Holdback Amount (less the Estimated Claim Amount for any and all claims then outstanding, less any and all required payments from the Primary Holdback Amount then outstanding and less the employer portion of all employment or payroll Taxes or similar amounts owed by any Group Company as a result of, or with respect or attributable to, the remaining Primary Holdback Amount to be paid to Employee Optionholders) to (i) the Paying Agent for the benefit of the Securityholders (other than the Employee Optionholders) and (ii) the Surviving Company (for distribution to the Employee Optionholders), and the Paying Agent and the Surviving Company, as applicable, shall promptly distribute to each Securityholder its Pro Rata Share thereof in accordance with the Allocation Schedule.

(b) If, upon the expiration of the IP Holdback Period, (i) no IP Claim by any Parent Indemnified Party for Damages remains outstanding or the Estimated Claim Amount of any and all IP Claims then outstanding is less than the remaining IP Holdback Amount, (ii) no required payment from the IP Holdback Amount pursuant to this Article 7 remains outstanding or any required payments from the IP Holdback Amount are less than the then-remaining IP Holdback Amount and (iii) any portion of the IP Holdback Amount remains undistributed, then within five (5) Business Days after the expiration of the IP Holdback Period, Parent shall release any remaining IP Holdback Amount (less the Estimated Claim Amount for any and all IP Claims then outstanding, less any and all required payments from the IP Holdback Amount then outstanding and less the employer portion of all employment or payroll Taxes or similar amounts owed by any Group Company as a result of, or with respect or attributable to, the remaining IP Holdback Amount to be paid to Employee Optionholders) to (i) the Paying Agent for the benefit of the Securityholders (other than the Employee Optionholders) and (ii) the Surviving Company (for distribution to the Employee Optionholders), and the Paying Agent and the Surviving Company, as applicable, shall promptly distribute to each Securityholder its Pro Rata Share thereof in accordance with the Allocation Schedule.

Section 7.08 Exclusive Remedy. From and after the Closing, the rights of the Indemnified Parties to indemnification relating to this Agreement or the transactions contemplated hereby shall be strictly limited to those contained in this Article 7, such indemnification rights shall be the exclusive remedies of the Indemnified Parties subsequent to the Closing Date with

respect to any matter in any way relating to this Agreement or arising in connection herewith. Notwithstanding the foregoing, this Section 7.08 shall not (i) interfere with or impede the operation of the provisions of Section 2.07, Section 2.08 and Section 2.09 providing for the resolution of certain specified disputes between the parties and/or by an Neutral Arbiter, (ii) limit the rights of the parties to specific performance in accordance with Section 9.10 or limit rights with respect to claims based on Fraud.

Section 7.09 No Duplicate Recovery. Any Damages for which any Indemnified Party is entitled to indemnification under this Article 7 shall be determined without duplication of recovery by reason of the state of facts giving rise to such Damages constituting a breach of more than one representation, warranty, covenant or agreement. For example, the Parent Indemnified Parties shall not be entitled to indemnification under this Article 7 with respect to any amount resulting in a claim to the extent that such amount is reflected in the final determination of the Final Merger Consideration pursuant to Section 2.07.

Section 7.10 Mitigation. The parties hereto acknowledge that each Indemnified Party is bound by a common law duty to mitigate any Damages for which such Indemnified Party may be entitled to indemnification pursuant to this Article 7.

ARTICLE 8 CONDITIONS TO OBLIGATIONS OF THE PARTIES

Section 8.01 Conditions to Parent's and Merger Sub's Obligations. The obligations of Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or, if permitted by Applicable Law, waiver by Parent and Merger Sub in writing) of the following conditions as of the Closing Date:

(a) No final, non-appealable judgment, decree or order from any Governmental Authority shall have been entered which would prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded;

(b) The Company shall have delivered to Parent each of the following:

(i) certified copies of the Shareholder Approval and the resolutions of the board of directors of the Company approving this Agreement and the transactions contemplated herein (collectively, the "Written Consents");

(ii) a duly executed certificate, in form and substance as prescribed by Treasury Regulations promulgated under Code Section 1445, stating that the Company is not, and has not been, during the relevant period specified in Section 897(c)(1)(A)(ii) of the Code, a "United States real property holding corporation" within the meaning of Section 897(c) of the Code;

(iii) duly executed Restrictive Covenant Agreement;

(iv) the third party consent to the transactions contemplated by this Agreement from the individuals or entities set forth on Schedule 8.01(b)(iv);

- (v) evidence of termination of the Advisor Agreement;
- (vi) evidence reasonably satisfactory to Parent and Merger Sub that the Conversion has been completed;
- (vii) other Ancillary Agreements, duly executed by the parties thereto (other than Parent and Merger Sub);
- (viii) evidence that the amount of Dissenting Shares does not exceed five percent (5%) of the aggregate Common Stock; and
- (ix) evidence reasonably satisfactory to Parent that any agreements, contracts or arrangements that may result, separately or in the aggregate, in a Section 280G Payment shall have been approved by shareholders of the Company holding the number of shares of Company capital stock required by the terms of Section 280G in order for such payments and benefits not to be deemed “parachute payments” thereunder, with such approval to be obtained in a manner that satisfies Section 280G(b)(5)(B) of the Code and all applicable regulations (whether proposed or final) relating to Section 280G and in form and substance reasonably satisfactory to Parent, or, in the absence of such shareholder approval, each Person who might otherwise have been entitled to any such payments or benefits shall have duly executed and delivered to Parent a waiver, in form and substance reasonably satisfactory to Parent, of any Section 280G Payment.

Section 8.02 Conditions to the Company’s Obligations. The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or, if permitted by Applicable Law, waiver by the Company in writing) of the following conditions as of the Closing Date:

- (a) no final, non-appealable judgment, decree or order from any Governmental Authority shall have been entered which would prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded;
- (b) Parent shall have delivered to the Company or the applicable Person each of the following:
 - (i) certified copies of resolutions (or a written consent) of the requisite holders of the voting shares of Merger Sub approving the consummation of the transactions contemplated by this Agreement;
 - (ii) certified copies of resolutions (or a written consent) duly adopted by Parent’s board of directors (or its equivalent governing body) and Merger Sub’s board of directors authorizing the execution, delivery and performance of this Agreement;
 - (iii) the Ancillary Agreements to which it is a party, duly executed by each of Parent and Merger Sub (as applicable); and

- (iv) all payments required to be made by Parent pursuant to Section 2.12.

ARTICLE 9 MISCELLANEOUS

Section 9.01 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted (except if not a Business Day or after 5:00 p.m. on such Business Day, then the next Business Day) via email to the email address set out below (*provided* that no “error” message or other notification of non-delivery is generated), (c) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices, demands and communications, in each case to the respective parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing by such party:

if to Parent, the Surviving Company and/or Merger Sub, to:

Perforce Software, Inc.
c/o Clearlake Capital Group, L.P.
233 Wilshire Boulevard, Suite 800
Santa Monica, California 90401
Attention: Behdad Eghbali, Managing Partner
Fred Ebrahemi, General Counsel
Email: behdad@clearlake.com
febrahemi@clearlake.com

and:

Perforce Software, Inc.
400 North First Avenue, Suite 200
Minneapolis, MN 55401
Attention: Sara Kilian, Vice President and General Counsel
Email: skilian@perforce.com

with a copy (which shall not constitute notice to Parent) to:

Sidley Austin LLP
1999 Avenue of the Stars, 17th Floor
Los Angeles, CA 90067
Attention: Mehdi Khodadad
Email: mkhodadad@sidley.com

if to the Representative, or after the Closing, to the Securityholders, to:

Fergus Slorach

95B Hinemoa Street
Auckland, New Zealand
Email: fergus@slorach.com

with a copy (which shall not constitute notice) to:

Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, MA 02116
Attention: Jeffrey R. Seul
Email: jeff.seul@hklaw.com

or such other address or email address as such party may hereafter specify for the purpose by notice to the other parties hereto.

Section 9.02 Amendments and Waivers.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 9.03 Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 9.04 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of each other party hereto. Notwithstanding the foregoing, Parent may collaterally assign the rights under this Agreement as security for its obligations in respect of any current or future financing that Parent or its Affiliates obtains, without the consent of the Company.

Section 9.05 Governing Law; WAIVER OF JURY TRIAL. This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF

ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES AND AGREES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.06 Jurisdiction. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in a United States District Court for the State of Delaware (or if such action cannot be brought therein, in any Delaware State Court), so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 9.01 shall be deemed effective service of process on such party.

Section 9.07 Counterparts; Effectiveness; Third Party Beneficiaries. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and any of which may be delivered by electronically in portable document format (.pdf). This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns, except as set forth in Section 5.06.

Section 9.08 Entire Agreement. This Agreement, the Ancillary Agreements and the documents, agreements, certificates and instruments contained herein and therein, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 9.09 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of

the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 9.10 Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each party agrees that it will not oppose (and hereby waives any defense in any action for) the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (i) the other parties have an adequate remedy at law or (ii) an award of specific performance or other equitable remedy is not an appropriate remedy for any reason at law, equity or otherwise. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement when available pursuant to the terms of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 9.11 Representative.

(a) Representative. In addition to the other rights and authority granted to the Representative elsewhere in this Agreement, upon and by virtue of the approval of the requisite holders of Common Stock of this Agreement, the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Merger, all of the Securityholders collectively and irrevocably constitute and appoint the Representative, as their agent, attorney-in-fact and representative to act from and after the date hereof for all purposes in connection with the Merger and the agreements ancillary hereto and to do any and all things and execute any and all documents which the Representative determines may be necessary, convenient or appropriate to facilitate the consummation of the transactions contemplated by this Agreement or otherwise to perform the duties or exercise the rights granted to the Representative hereunder, including: (i) execution of the documents and certificates pursuant to this Agreement; (ii) receipt and, if applicable, forwarding of notices and communications pursuant to this Agreement; (iii) administration of the provisions of this Agreement and the Paying Agent Agreement; (iv) giving or agreeing to, on behalf of all or any of the Securityholders, any and all consents, waivers, amendments or modifications deemed by the Representative, in its sole and absolute discretion, to be necessary or appropriate under this Agreement and the execution or delivery of any documents that may be necessary or appropriate in connection therewith; (v) amending this Agreement or any of the instruments to be delivered to Parent or Merger Sub pursuant to this Agreement; (vi) (A) disputing or refraining from disputing, on behalf of each Securityholder relative to any amounts to be received by such Securityholder under this Agreement or any agreements contemplated hereby, any claim made by Parent or Merger Sub under this Agreement or other agreements contemplated hereby, (B) negotiating and compromising, on behalf of each such Securityholder, any dispute that may arise under, and exercising or refraining from exercising any remedies available under, this Agreement or any other agreement contemplated hereby, and (C) executing, on behalf of each such Securityholder, any settlement agreement, release or other document with respect to such dispute or remedy; and (vii) engaging attorneys, accountants, agents or consultants on behalf of the

Securityholders in connection with this Agreement or any other agreement contemplated hereby and paying any fees related thereto.

(b) Authorization. Notwithstanding Section 9.11(a), in the event that the Representative is of the opinion that it requires further authorization or advice from the Securityholders on any matters concerning this Agreement, the Representative shall be entitled to seek such further authorization from the Securityholders prior to acting on their behalf. In such event, each Securityholder shall vote in accordance with its Pro Rata Share, and the authorization of a majority of such Persons shall be binding on all of the Securityholders and shall constitute the authorization of the Securityholders. The appointment of the Representative is coupled with an interest and shall be irrevocable by any Securityholder in any manner or for any reason. This authority granted to the Representative shall not be affected by the death, illness, dissolution, disability, incapacity or other inability to act of any principal pursuant to any Applicable Law. Fergus Slorach hereby accepts his appointment as the initial Representative.

(c) Actions by the Representative; Resignation; Vacancies. The Representative may resign from its position as Representative at any time by written notice delivered to Parent and the Securityholders. If there is a vacancy at any time in the position of the Representative for any reason, such vacancy shall be filled by the majority vote in accordance with the method set forth in Section 9.11(b) above.

(d) No Liability. All acts of the Representative hereunder in its capacity as such shall be deemed to be acts on behalf of the Securityholders and not of the Representative individually. The Representative shall not have any liability for any amount owed to Parent pursuant to this Agreement, including Section 2.06 or Section 2.07. The Representative shall not be liable to the Company, Parent, Merger Sub, or any other Person in its capacity as the Representative, for any liability of a Securityholder or otherwise, or for anything which it may do or refrain from doing in connection with this Agreement. The Representative will incur no liability of any kind with respect to any action or omission by the Representative in connection with the Representative's services pursuant to this Agreement and any agreements ancillary hereto, except in the event of liability resulting from the Representative's fraud, bad faith, gross negligence or willful misconduct. The Representative shall not be liable for any action or omission pursuant to the advice of legal counsel. The Representative shall not by reason of this Agreement have a fiduciary relationship in respect of any Securityholder, except in respect of amounts received on behalf of the Securityholders.

(e) Indemnification; Expenses. The Securityholders, in accordance with each such Securityholder's Pro Rata Share, will indemnify, defend and hold harmless the Representative from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the reasonable and documented fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Representative's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; *provided* that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the fraud, bad faith, gross negligence or willful misconduct of the Representative, the Representative will reimburse the Securityholders the amount of such indemnified Representative Loss to the extent

attributable to such fraud, bad faith, gross negligence or willful misconduct; *provided further*, that with respect to each Securityholder, the maximum Representative Losses pursuant to this Section 9.11(e) shall be an amount equal to the amount of Merger Consideration actually received by such Securityholder. In no event will the Representative be required to advance its own funds on behalf of the Securityholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Securityholders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Representative under this section. The foregoing indemnities will survive the Closing, the resignation or removal of the Representative or the termination of this Agreement.

Section 9.12 Representation By Counsel. The parties acknowledge and agree that, at all times relevant hereto up to the Closing, Holland & Knight LLP (the “Law Firm”) has represented only the Company (pre-Closing) and its Subsidiaries (pre-Closing). Parent and the Company hereby agree that, in the event a dispute arises after the Closing between Parent, the Company or any of its Subsidiaries, on one hand, and the Securityholders, on the other hand, the Law Firm may represent the Securityholders in such dispute even though the interests of the Securityholders may be directly adverse to the Company, its Subsidiaries or Parent, and even though the Law Firm may have represented the Company or its Subsidiaries in the transactions contemplated hereby or in a matter substantially related to such dispute, or may be handling ongoing matters for the Company or its Subsidiaries. Parent, who is represented by independent counsel in connection with the transactions contemplated by this Agreement, hereby agrees, in advance, to waive any actual or potential conflict of interest that may hereafter arise in connection with the Law Firm’s future representation of the Securityholders in such circumstances. Parent, Representative and the Company further agree that, as to all communications between the Law Firm, the Company (prior to the Closing) and its Subsidiaries (prior to Closing) that primarily involve or arise from the transactions contemplated by this Agreement, the attorney-client privilege and the expectation of client confidence belongs to the Securityholders and may be controlled by the Representative on behalf of the Securityholders, and shall not pass to or be claimed or controlled by the Company or its Subsidiaries (post-Closing). Parent, the Representative and the Company further agree that, in the course of representing the Company or its Subsidiaries prior to the Closing, including in connection with the transactions contemplated hereby, the Law Firm will have obtained confidential information regarding the Company and its Subsidiaries (the “SH Confidential Information”). The SH Confidential Information includes all communications (written or electronic) between the Law Firm, on the one hand, and the directors, officers, members, managers and employees of the Company and its Subsidiaries, on the other hand, including all files, attorney notes, drafts or other documents directly relating to this Agreement and the transactions contemplated hereby which predate the Closing (collectively, “H&K Work Product”). In any dispute between Parent, the Company or any of its Subsidiaries, on one hand, and the Securityholders, on the other hand, to the extent that any SH Confidential Information is in the Law Firm’s possession as of the Closing Date, such SH Confidential Information may be used on behalf of the Securityholders in connection with such dispute. Further, in any such dispute, Parent, the Company and its Subsidiaries waive the right to present any H&K Work Product as evidence in any action arising out of or related to any such dispute. Parent, the Company and its Subsidiaries waive their right to access any H&K Work Product, except as reasonably necessary in connection with an action which is not a dispute between Parent, the Company or any of its Subsidiaries, on one hand, and the Securityholders, on the other hand.

Parent, the Company and its Subsidiaries hereby consent to the disclosure and use by the Law Firm for the benefit of the Securityholders of any information (confidential or otherwise) disclosed to it by or on behalf of the Company or any of its Subsidiaries prior to the Closing Date. Notwithstanding the foregoing, in the event a dispute arises between Parent or the Company and a Person other than the Securityholders after the Closing, the Company may assert the attorney-client privilege to prevent disclosure of confidential communications by the Law Firm to such Person; *provided, however*, that the Company may not waive such privilege (except if requested or required by a Governmental Authority) without the prior written consent of the Representative (on behalf of the Securityholders), which consent will not be unreasonably withheld. Notwithstanding the foregoing or anything herein to the contrary, nothing herein shall limit Parent's recourse or access to documents and information in the case of Fraud.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be duly executed by their respective authorized officers as of the day and year first above written.

BUYER:

PERFORCE SOFTWARE, INC.

By: _____
Name:
Title:

COMPANY:

METHODICS HOLDINGS, INC.

By: _____
Name:
Title:

MERGER SUB:

WC ACQUISITION SUB, INC.

By: _____
Name:
Title:

REPRESENTATIVE:

Fergus Slorach

EXHIBIT A

Allocation Schedule

EXHIBIT B

Reference Statement