PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT3711809

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	AGREEMENT AND PLAN OF MERGER

CONVEYING PARTY DATA

Name	Execution Date
ACHILLES GUARD, INC.	12/19/2014

RECEIVING PARTY DATA

Name:	ALERT LOGIC, INC.
Street Address:	1776 YORKTOWN
City:	HOUSTON
State/Country:	TEXAS
Postal Code:	77056

PROPERTY NUMBERS Total: 1

Property Type	Number
Patent Number:	7325252

CORRESPONDENCE DATA

Fax Number: (512)371-9088

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 512 637 9220
Email: sramdeen@sprinklelaw.com
Correspondent Name: SPRINKLE IP LAW GROUP
Address Line 1: 1301 W. 25TH STREET
Address Line 2: SUITE 408
Address Line 4: AUSTIN, TEXAS 78705

ATTORNEY DOCKET NUMBER:	LOGI1170-1
NAME OF SUBMITTER:	KATHARINA W. SCHUSTER
SIGNATURE:	/Katharina W. Schuster/
DATE SIGNED:	01/26/2016

Total Attachments: 82
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Execution Version

AGREEMENT AND PLAN OF MERGER

by and among

ACHILLES GUARD, INC. (D/B/A CRITICAL WATCH),

ALCW ACQUISITION COMPANY LLC,

ALCW ACQUISITION CORPORATION,

ALERT LOGIC, INC.,

and

NELSON BUNKER, as the Representative

Dated as of December 19, 2014

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Exhibit B	Limited Liability Company Agreement of Surviving Company
Exhibit C	List of Directors of Surviving Company
Exhibit D	List of Officers of Surviving Company
Exhibit E	Letter of Transmittal
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Schedules:

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is made and entered into as of December 19, 2014 by and among ACHILLES GUARD, INC. (d/b/a Critical Watch), a Texas corporation (the "**Company**"), ALERT LOGIC, INC., a Delaware corporation ("**Buyer**"), **ALCW ACQUISITION COMPANY LLC**, a Delaware limited liability company and a wholly-owned subsidiary of Buyer ("**Merger Sub (LLC)**"), ALCW ACQUISITION CORPORATION, a Delaware corporation and a wholly-owned subsidiary of Buyer ("**Merger Sub (Corp)**" and together with Merger Sub (LLC), the "**Merger Subs**"), and Nelson Bunker, in his capacity as the representative of the Company Parties (the "**Representative**"). Capitalized terms used herein have the meanings ascribed to such terms on Annex I hereto.

W I T N E S S E T H:

WHEREAS, Buyer desires to acquire the Company pursuant to the terms of this Agreement;

WHEREAS, upon the terms and conditions set forth herein and in accordance with the General Corporation Law of the State of Delaware (the "**DGCL**") and the Texas Business Organizations Code (the "**TBOC**"), the Buyer, Merger Sub (Corp), and the Company will enter into a business combination transaction pursuant to which Merger Sub (Corp) will merge with and into the Company (the "**First Merger**"), with the Company as the surviving company of the First Merger;

WHEREAS, immediately after the consummation of the First Merger, upon the terms and subject to the conditions of this Agreement and in accordance with the Delaware Limited Liability Company Act (the "**Act**") and the TBOC, the Buyer, the Company, and Merger Sub (LLC) will enter into a business combination transaction pursuant to which the Company, as the surviving company of the First Merger, will merge with and into Merger Sub (LLC) (the "**Second Merger**"), with Merger Sub (LLC) as the surviving company of the Second Merger (the "**Surviving Company**") (each of the First Merger and the Second Merger a "**Merger**" and together the "**Mergers**");

WHEREAS, the parties intend that, for U.S. federal income tax purposes, (i) the Mergers, taken together, shall constitute an integrated transaction that is characterized as a merger of the Company directly with and into the Buyer that qualifies as a reorganization within the meaning of Section 368(a)(1)(A) of the Code, (ii) Buyer and the Company are parties to such reorganization within the meaning of Section 368(b) of the Code, and (iii) this Agreement constitute a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a);

WHEREAS, the Board of Directors of the Buyer has determined that the First Merger and the Second Merger are consistent with and are in furtherance of the long-term business strategy of the Buyer, and are in the best interests of the Buyer and its stockholders, and has approved and adopted this Agreement and has approved the First Merger and the Second Merger and the other transactions contemplated by this Agreement;

WHEREAS, the Board of Directors of the Company (i) has determined that the First Merger and the Second Merger are in the best interests of the Company and its stockholders, and has approved and adopted this Agreement and declared its advisability, and has approved the First Merger and the Second Merger and the other transactions contemplated by this Agreement and (ii) has recommended that the stockholders of the Company approve and adopt this Agreement, the First Merger and the Second Merger; and

WHEREAS, promptly following the execution and delivery of this Agreement, stockholders of the Company representing holders of the requisite number of shares of each class of capital stock of the Company, as required by the Company's Articles of Incorporation and the applicable provisions of the TBOC, shall execute a written consent adopting this Agreement and approving the Merger, this Agreement and the transactions contemplated hereunder (the "**Required Stockholder Approval**").

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, covenants, representations and warranties contained herein, the parties, intending to be legally bound, agree as follows:

ARTICLE I
THE MERGER

1.1 The Merger. At the First Merger Effective Time, in accordance with this Agreement, the DGCL and the TBOC, Merger Sub (Corp) shall be merged with and into the Company, the separate existence of Merger Sub (Corp) shall cease, and the Company shall continue as the surviving corporation of the First Merger and shall continue its legal existence pursuant to the DGCL and the TBOC. Immediately thereafter, at the Second Merger Effective Time, subject to the terms and conditions of this Agreement and in accordance with the Act and the TBOC, (i) the Company, as the surviving company of the First Merger, shall be merged with and into Merger Sub (LLC), (ii) the separate corporate existence of the Company shall cease, and (iii) Merger Sub (LLC) shall be the Surviving Company of the Second Merger and shall continue its legal existence pursuant to the DGCL.

1.2 Effects of the Merger. At the First Merger Effective Time, the effect of the First Merger shall be as provided herein and in the applicable provisions of the DGCL and the TBOC. Without limiting the generality of the foregoing, and subject thereto, at the First Merger Effective Time, all the property, rights, privileges, powers, franchises and assets of the Company and Merger Sub (Corp) shall vest in the Company as the surviving company of the First Merger, and all debts, liabilities, obligations and duties of the Company and Merger Sub (Corp) shall become the debts, liabilities, obligations and duties of the Company as the surviving company of the First Merger. At the Second Merger Effective Time, the effect of the Second Merger shall be as provided herein and in the applicable provisions of the Act and the TBOC. Without limiting the generality of the foregoing, and subject thereto, as the Second Merger Effective Time, all the property, rights, privileges, powers, franchises and assets of the Company, as the surviving company of the First Merger, and Merger Sub (LLC) shall vest in the Surviving Company, and all debts, liabilities, obligations and duties of the Company, as the surviving company of the First Merger, and Merger Sub (LLC) shall become the debts, liabilities, obligations and duties of the Surviving Company.

1.3 Consummation of the Merger. The closing of the Mergers (the "**Closing**") shall take place at the offices of DLA Piper LLP (US), 1717 Main St., Suite 4600, Dallas, TX 75201, at 10:00 a.m. local time on the date hereof or on such other date, time and place as the Company and the Buyer may mutually agree in writing (the "**Closing Date**"). On the Closing Date as soon as practicable following the Closing, the Company and Merger Sub (Corp) will cause the First Merger to be consummated by (a) filing with the Secretary of State of the State of Delaware a certificate of merger in such form as required by, and executed in accordance with, the relevant provisions of the DGCL (the "**First Delaware Certificate of Merger**") and (b) filing with the Secretary of State of the State of Texas a certificate of merger in such form as required by, and executed in accordance with, the relevant provisions of the TBOC (the "**First Texas Certificate of Merger**") and take all such further action as may be required by law to make the First Merger effective. The First Merger shall become effective on the later of the date and time at which the First Delaware Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or the First Texas Certificate of Merger has been duly filed with the Secretary of

State of the State of Texas; *provided, however*, that the term "**First Merger Effective Time**" as used herein shall mean the date and time when the Merger becomes effective as set forth in the First Delaware Certificate of Merger. Immediately after the filing of the First Delaware Certificate of Merger and the First Texas Certificate of Merger, the Company, as the surviving company of the First Merger, and Merger Sub (LLC) shall cause the Second Merger to be consummated by (a) filing with the Secretary of State of the State of Delaware a certificate of merger in such form as required by, and executed in accordance with, the relevant provisions of the Act (the "**Second Delaware Certificate of Merger**") and (b) filing with the Secretary of State of the State of Texas a certificate of merger in such form as required by, and executed in accordance with, the relevant provisions of the TBOC (the "**Second Texas Certificate of Merger**" and together with the First Delaware Certificate of Merger, the Second Delaware Certificate of Merger and the First Texas Certificate of Merger, the "**Certificates of Merger**") and take all such further action as may be required by law to make the Second Merger effective. The Second Merger shall become effective on the later of the date and time at which the Second Delaware Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or the Second Texas Certificate of Merger has been duly filed with the Secretary of State of the State of Texas; *provided, however*, that the term "**Second Merger Effective Time**" as used herein shall mean the date and time when the Merger becomes effective as set forth in the Second Delaware Certificate of Merger.

1.4 Certificate of Formation; Managers and Officers; Name. At the First Merger Effective Time, the certificate of incorporation of the Company, as in effect immediately prior to the First Merger Effective Time, shall continue to be the certificate of incorporation of the Company as the surviving company of the First Merger. At the Second Merger Effective Time: (a) the Certificate of Formation of Merger Sub (LLC) as the Surviving Company shall be amended and restated in the form attached hereto as Exhibit A, and a statement to this effect shall be included in the Second Delaware Certificate of Merger and the Second Texas Certificate of Merger; (b) the limited liability company agreement of Merger Sub as the Surviving Company shall be amended and restated in the form attached hereto as Exhibit B; (c) the Persons listed in Exhibit C attached hereto shall become the initial members of the Board of Managers of the Surviving Company, in each case until their successors are duly elected and qualified; (d) the Persons listed in Exhibit D attached hereto shall be the initial officers of the Surviving Company, in each case until their successors are duly elected and qualified; and (e) the name of the Surviving Company immediately following the Second Merger Effective Time shall be Critical Watch LLC.

1.5 Taking Necessary Action; Further Action. If, at any time after the Second Merger Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Company with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company or the Merger Subs, the managers, directors and officers of such entities are fully authorized in the name of their respective entity or otherwise to take, and shall take, all such lawful and necessary action.

1.6 Tax Treatment. The parties intend that, for U.S. federal income tax purposes, the Mergers, taken together, shall constitute an integrated transaction that is characterized as a merger of the Company directly with and into the Buyer that qualifies as a reorganization within the meaning of Section 368(a)(1)(A) of the Code and that Buyer and the Company are parties to such reorganization within the meaning of Section 368(b) of the Code. Each party agrees to treat the Mergers consistent with such intended treatment for federal income tax purposes including, without limitation, by filing all federal income tax returns in a manner that is consistent therewith and satisfying all federal income tax reporting requirements relating thereto. The parties hereby adopt this Agreement as a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).

ARTICLE II
EFFECT OF MERGERS ON CAPITAL STOCK OF CONSTITUENT CORPORATIONS

2.1 Conversion of Capital Stock of the Company. At the First Merger Effective Time, by virtue of the Merger and without any action on the part of Buyer, Merger Sub (Corp), the Company or any Stockholder:

(a) Each share of common stock of Merger Sub (Corp) issued and outstanding immediately prior to the First Merger Effective Time shall be converted into and become one share of common stock in the surviving company of the First Merger owned by Buyer;

(b) Each share of Capital Stock of the Company that is owned by the Company as treasury stock shall be cancelled, retired and shall cease to exist, without any conversion thereof, and no distribution shall be made with respect thereto (the "**Cancelled Treasury Shares**");

(c) Except for Cancelled Treasury Shares and Dissenting Shares:

(i) Each share of Company Common Stock held by an Accredited Company Party issued and outstanding immediately prior to the First Merger Effective Time shall be converted into the right to receive (A) a cash amount equal to the Closing Cash Per Share Amount, (B) a number of shares of Buyer Stock equal to the Closing Stock Per Share Amount, (C) a portion of the Working Capital Excess (if any), payable when, as and if payable to the Company Parties pursuant to Section 2.6(c), and (D) a portion of the Escrow Fund payable when, as and if payable to the Company Parties pursuant to the terms hereof and the Escrow Agreement; and

(ii) Each share of Company Common Stock held by a Non-Accredited Company Party issued and outstanding immediately prior to the First Merger Effective Time shall be converted into the right to receive (A) a cash amount equal to the Closing Cash Per Share Amount, (B) a cash amount equal to the Closing Cash in Lieu of Stock Per Share Amount, (C) a portion of the Working Capital Excess (if any), payable when, as and if payable to the Company Parties pursuant to Section 2.6(c), and (D) a portion of the Escrow Fund payable when, as and if payable to the Company Parties pursuant to the terms hereof and the Escrow Agreement.

(d) Notwithstanding anything to the contrary in this Agreement, any shares of Company Stock that are outstanding immediately prior to the First Merger Effective Time and which are held by any Stockholder who shall not have voted in favor of the Merger or consented thereto in writing and who shall have demanded properly in writing appraisal for such shares in accordance with Section 10.356 of the TBOC (collectively, the "**Dissenting Shares**") shall not be converted into or represent the right to receive the consideration into which the shares of Company Stock held by such Stockholder otherwise would have been converted pursuant to this Section 2.1. Such Stockholders shall be entitled to receive payment of the appraised value of such Dissenting Shares held by them in accordance with the provisions of such Section 10.356, except that all Dissenting Shares held by Stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such shares under such Section 10.356 shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the First Merger Effective Time, the right to receive the consideration, upon surrender, in the manner provided in Section 2.4, of the certificate or certificates that formerly evidenced such shares. The Company shall give Buyer (i) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands, and any other instruments served pursuant to the TBOC and received by the Company and (ii) all information in the Company's possession or control concerning negotiations and proceedings with respect to demands for appraisal under the TBOC as may be reasonably requested by Buyer. Prior to the Closing, the Company shall not, except with the written

consent of Buyer (which shall not be unreasonably withheld or delayed), agree to make any payment with respect to, or settle or offer to settle, any such demands.

(e) At the Second Merger Effective Time, by virtue of the Second Merger and without any action on the part of the Company, Merger Sub (LLC) or the Buyer, (i) the membership interest of Merger Sub (LLC) issued and outstanding immediately prior to the Second Merger Effective Time shall be converted into and become one membership interest in the Surviving Company owned by the Buyer, and (ii) all Capital Stock of the surviving company of the First Merger shall be canceled, retired and shall cease to exist, without any conversion thereof, and no distribution shall be made with respect thereto.

2.2 Options and Warrants. Prior to the First Merger Effective Time, the Company shall, in a manner consistent with the Option Plan and including the required notice thereunder, take all necessary action so that each Company Option that is unexpired, unexercised and outstanding immediately prior to the First Merger Effective Time, whether vested or unvested, shall be automatically cancelled and terminated as of the First Merger Effective Time. Upon the cancellation thereof, each Vested Company Option shall be converted into the right to receive in respect of each share of Company Common Stock that was issuable upon exercise of such Vested Company Option immediately prior to the First Merger Effective Time an amount determined as follows:

(a) For each Vested Company Option held by Accredited Company Parties; (i) a cash amount equal to the Closing Cash Per Share Amount, to be paid by the Surviving Company on the first payroll following receipt of a Surrender Agreement by the Surviving Company, less the applicable exercise price per share of such Vested Company Option, (ii) a number of shares of Buyer Stock equal to the Closing Stock Per Share Amount, (iii) a portion of the Working Capital Excess (if any), payable when, as and if payable to the Company Parties pursuant to Section 2.6(c), and (iv) a portion of the Escrow Fund payable when, as and if payable to the Company Parties pursuant to the terms hereof and the Escrow Agreement.

(b) For each Vested Company Option held by Non-Accredited Company Parties; (i) a cash amount equal to the Closing Cash Per Share Amount, to be paid by the Surviving Company on the first payroll following receipt of a Surrender Agreement by the Surviving Company, less the applicable exercise price per share of such Vested Company Option, (ii) a cash amount equal to the Closing Cash in Lieu of Stock Per Share Amount, to be paid by the Surviving Company on the first payroll following receipt of a Surrender Agreement by the Surviving Company, (iii) a portion of the Working Capital Excess (if any), payable when, as and if payable to the Company Parties pursuant to Section 2.6(c), and (iv) a portion of the Escrow Fund payable when, as and if payable to the Company Parties pursuant to the terms hereof and the Escrow Agreement.

2.3 Delivery of Estimated Merger Consideration.

(a) At the First Merger Effective Time, the Estimated Merger Consideration shall be distributed by Buyer as follows, all as set forth on a funds flow memorandum reasonably agreed to by Buyer and the Company prior to Closing, and in each case on the terms and subject to the conditions set forth in this Agreement:

(i) Buyer shall deliver the Closing Cash Payment and the Closing Buyer Stock Payment, less the aggregate amount of the Closing Company Option Payments, to the Exchange Agent (the "**Exchange Fund**") pursuant to the terms of the Exchange Agent Agreement;

(ii) Buyer shall deliver the aggregate amount of the Closing Company Option Payments to the Surviving Company for payment to the holders of Vested Company Options pursuant to Section 2.2;

(iii) Buyer shall deposit cash in the amount of $1,600,465 (the "**Escrow Amount**") with the Escrow Agent pursuant to the terms of the Escrow Agreement representing the sum of (A) $1,000,000 (the "**General Escrow Amount**") in order to secure payment of the Buyer Indemnified Parties' right for indemnification under ARTICLE VIII and the payment to Buyer of the Working Capital Shortfall (if any) pursuant to Section 2.6, and (B) $600,465 (the "**Sales Tax Escrow Amount**") in order to secure payment of the Buyer Indemnified Parties' right for indemnification for Sales Tax under Section 8.2(a)(x); and

(iv) Buyer shall deliver (A) the payoff amounts set forth on the Payoff Letters to the holders of Company Indebtedness in satisfaction thereof and (B) any unpaid Company Transaction Expenses to the recipients thereof pursuant to written wire transfer instructions delivered to Buyer by the Representative at least two (2) Business Days prior to the Closing Date (collectively, the "**Closing Third Party Payments**").

(b) Legends. The share certificates issued by Buyer representing shares of Buyer Stock shall bear the following legend, along with additional legends as may be required pursuant to the Buyer Stockholder Agreement:

> "The shares of Alert Logic, Inc., a Delaware corporation, represented by this certificate have not been registered under the Securities Act of 1933, as amended (the "**Act**"), and may not be sold or transferred in the absence of an effective registration statement under the Act or an exemption from registration thereunder."

(c) Fractional Shares. Notwithstanding anything to the contrary herein, all shares of Buyer Stock to be issued to any Company Party pursuant to this Agreement shall be aggregated and rounded to the nearest 1/10,000 of a share.

(d) Reserve Fund. The Company Parties acknowledge and agree that their respective Pro Rata Share of $300,000 of the Estimated Merger Consideration that is payable in cash (the "**Reserve Fund**") shall be distributed to and held by the Representative, which funds shall be used to pay post-closing fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby. The Representative shall distribute the balance of the Reserve Fund not otherwise utilized as contemplated herein to the Company Parties (in accordance with their respective Pro Rata Shares) at such time as the Representative deems no other fees or expenses will be incurred.

2.4 Surrender and Exchange of Certificates.

(a) Exchange Procedures. From and after the First Merger Effective Time, each Stockholder shall have the right to receive the applicable cash and/or Buyer Stock from the Exchange Fund payable pursuant to Section 2.1(c) upon delivery to the Exchange Agent of: (i) a certificate or certificates (the "**Certificates**") (or an indemnity of lost certificate(s) in accordance with Section 2.5) which immediately prior to the First Merger Effective Time represent outstanding shares of Company Common Stock, (ii) a Letter of Transmittal in the form attached as Exhibit E, duly executed and completed in accordance with the instructions thereto, (iii) if such Company Stockholder is an Accredited Company Party, a duly-executed joinder agreement substantially in the form attached as Exhibit F hereto (a "**Joinder**") effectively joining such Company Party as a party to the Buyer Stockholder Agreement,

and (iv) such other documents reasonably required by Buyer or Exchange Agent to effect the transfer of the Certificates (and underlying shares) for cancellation.

(b) Rights Subsequent to Closing. Until surrendered to the Exchange Agent, each Certificate representing shares of Company Common Stock outstanding immediately prior to the First Merger Effective Time will be deemed from and after the First Merger Effective Time, for all corporate purposes, to represent only the right to receive, upon surrender, the amount and type of Merger Consideration issuable in exchange for shares of Company Common Stock represented by such Certificate in accordance with the provisions of this Agreement. Any portion of the Merger Consideration that remains undistributed to the Company Parties on the date one hundred eighty (180) days after the First Merger Effective Time shall be returned to Buyer, and any Company Party who has not theretofore received any applicable Merger Consideration to which such Company Party is entitled under this ARTICLE II shall thereafter look only to Buyer (subject to abandoned property, escheat or other similar Laws) for payment of claims with respect thereto and only as a general creditor thereof.

(c) Dissenting Shares. The provisions of this Section 2.4 shall also apply to Dissenting Shares that lose their status as such, except that the obligations of Buyer under this Section 2.4 shall commence on the date of loss of such status and the holder of such shares shall be entitled to receive in exchange for such shares the amount of Merger Consideration payable pursuant to this Agreement.

(d) Distributions with Respect to Unexchanged Company Common Stock. No dividends or other distributions declared or made after the First Merger Effective Time with respect to shares of Buyer Stock with a record date after the First Merger Effective Time shall be paid to the holder of any unsurrendered Certificate until the holder of such Certificate shall surrender such Certificate as provided in Section 2.4(a).

(e) No Liability. The Surviving Company shall not be liable to any Person in respect of any cash or other consideration payable under ARTICLE II as may be delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Certificate has not been surrendered prior to five (5) years after the First Merger Effective Time (or immediately prior to such earlier date on which the consideration payable under ARTICLE II in respect of such Certificate would otherwise escheat to or become the property of any Governmental Authority), any such shares, cash, dividends or distributions in respect of such Certificate shall, to the extent permitted by applicable Law, become the property of the Surviving Company, free and clear of all claims or interest of any Person previously entitled thereto.

(f) No Further Rights. From and after the First Merger Effective Time, no shares of Company Stock shall be deemed to be outstanding, and holders of Certificates shall cease to have any rights with respect thereto, except as provided herein or by Law.

(g) Closing of Transfer Books. At the First Merger Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Stock shall thereafter be made.

2.5 Lost, Stolen or Destroyed Certificates. If any holder of shares of Company Stock shall be unable to surrender such holder's Certificates because such Certificates have been lost, mutilated or destroyed, such holder may deliver in lieu thereof an affidavit and, if requested by the Surviving Company, shall deliver an indemnity agreement in form and substance reasonably satisfactory to the Surviving Company, and such delivery or deliveries, as the case may be, shall constitute surrender of such lost, mutilated or destroyed Certificates for purposes of this Section 2.5.

2.6 Adjustments to Merger Consideration.

(a) Closing Date Estimates. Not less than two nor more than five Business Days prior to the Closing Date, the Company shall prepare and deliver to Buyer (i) a statement (the "**Closing Statement**"), containing the Company's good faith estimates of the Closing Date Working Capital, determined in accordance with the guidelines set forth in Section 2.6(b) as if it were the actual Closing Date Working Capital (the "**Estimated Closing Date Working Capital**"), Closing Indebtedness, Company Transaction Expenses and the Estimated Adjustment Amount, together with the calculation, based on the foregoing estimates, of the Estimated Merger Consideration, Closing Cash Payment, Closing Buyer Stock Payment, Closing Cash in Lieu of Stock Payment and Closing Company Option Payment and calculations of the Closing Cash Per Share Amount, Closing Stock Per Share Amount, and Closing Cash in Lieu of Stock Per Share Amount, and (ii) a schedule (the "**Allocation Schedule**") of the Estimated Merger Consideration payable to each Company Party pursuant to this Agreement and each Company Party's Pro Rata Share. The Closing Statement and Allocation Schedule shall be subject to the reasonable approval of the Buyer and, upon such approval, shall be binding on the Exchange Agent and the parties hereto, absent manifest error. Prior to the Closing, the Company shall cooperate with and make available to the Buyer and its representatives all information, records, data and working papers, and shall permit reasonable access to its facilities and personnel, as may be reasonably required solely in connection with the Buyer's review of the amounts set forth in the Closing Statement and the Allocation Schedule and the resolution of any disputes related thereto.

(b) Post-Closing Working Capital Statement.

(i) No later than 60 days following the Closing Date, Buyer will prepare and deliver to the Representative a statement (the "**Closing Date Working Capital Statement**") showing, in reasonable detail, a calculation of Working Capital as of the Closing Date. The Closing Date Working Capital Statement shall be prepared in accordance with GAAP, as consistently applied by the Company, and in accordance with the guidelines identified in Schedule 2.6. Buyer shall make the work papers, backup materials, and books and records used in preparing the Closing Date Working Capital Statement available to the Representative and its accountants at reasonable times and upon prior notice following the delivery of the Closing Date Working Capital Statement by Buyer to the Representative; provided that Buyer and the Representative shall first make mutually acceptable arrangements to preserve Buyer's attorney-client or work-product privilege with respect to any such information.

(ii) Within 30 days after the date Buyer delivers to the Representative the Closing Date Working Capital Statement, if the Representative disagrees in good faith with Buyer's determination of Closing Date Working Capital as set forth in the Closing Date Working Capital Statement Representative, the Representative may give written notice (the "**Objection Notice**") to Buyer within such 30-day period (A) setting forth Representative's determination of Closing Date Working Capital and (B) specifying in reasonable detail Representative's basis for disagreement with Buyer's determination of Closing Date Working Capital. The failure by Representative to deliver an Objection Notice within such 30-day period shall constitute the acceptance of Buyer's computation of Closing Date Working Capital. If Representative and Buyer are unable to resolve any matter raised in the Objection Notice with respect to the determination of Closing Date Working Capital within 30 days after delivery of the Objection Notice, the items in dispute (the "**Disputed Items**") may be referred by the Representative or Buyer for determination to such accounting firm mutually agreed upon by Buyer and Representative (the "**Accounting Referee**") as promptly as practicable, but not later than five days after the expiration of such 30-day period. The parties shall use reasonable best efforts to cause the Accounting Referee to render its decision as soon as practicable thereafter (but in no event later than 30 days after the submission to the Accounting Referee of the notice of disagreement referred to in the immediately preceding sentence), including by promptly complying with all reasonable requests by the Accounting Referee for

information, books, records, and similar items. The Accounting Referee shall make a determination as to each of the Disputed Items (and each item affected thereby), which determination shall be (1) in writing, (2) furnished to Representative and Buyer as promptly as practicable after the Disputed Items have been referred to the Accounting Referee (but in no event later than 30 days thereafter), (3) made in accordance with this Agreement, and (4) conclusive and binding upon each of the parties absent manifest error. The Accounting Referee shall have no authority to decide any disagreements between Representative and Buyer with respect to any matters of law or the interpretation of this Agreement (but excluding any issues or questions regarding the interpretation or calculation of Closing Date Working Capital), unless specifically agreed to in writing by Representative and Buyer. The fees and expenses of the Accounting Referee's review and report shall be allocated to be paid by Buyer and/or the Representative, respectively, based upon the percentage which the portion of the total amount of Disputed Items and not awarded to such party bears to the total amount of Disputed Items, as determined by the Accounting Referee. The Working Capital as of 12:01 a.m. Central Time on the Closing Date, determined in accordance with this Section 2.6(b), is referred to herein as "**Closing Date Working Capital.**"

(c) Working Capital Adjustment. If Closing Date Working Capital is less than Estimated Closing Date Working Capital (such shortfall, the "**Working Capital Shortfall**"), then Buyer and the Representative shall promptly deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to disburse to Buyer a portion of the Escrow Fund equal to such Working Capital Shortfall. If Closing Date Working Capital is greater than Estimated Closing Date Working Capital (such excess, the "**Working Capital Excess**"), then Buyer shall pay an amount in cash equal to such Working Capital Excess to the Exchange Agent, who shall in turn pay such amount to the Company Parties on a pro rata basis based on their respective Pro Rata Share; *provided, however*, that the portion of the Working Capital Excess payable to the holders of Vested Company Options as of immediately prior to the First Merger Effective Time shall be paid to the Surviving Company, which shall in turn pay such amount (less applicable withholdings) to such holders on a pro rata basis based on their respective Pro Rata Share.

2.7 Pay-Off Letters. Not less than two nor more than five Business Days prior to the Closing Date, the Company shall deliver to Buyer pay-off letters with respect to the Closing Indebtedness in form and substance reasonably satisfactory to the Buyer (the "**Pay-Off Letters**"), which Pay-Off Letters shall indicate that all Liens on the properties and assets of the Company in respect of such Closing Indebtedness will be released upon receipt of the amounts indicated in the Pay-Off Letters.

2.8 Withholding. Each of the Buyer, the Company, the Surviving Company, the Exchange Agent and the Escrow Agent shall be entitled to deduct and withhold from any consideration otherwise payable hereunder to any Person such consideration as it is required to deduct and withhold under any provision of any applicable Tax Law. To the extent that any consideration is so deducted and withheld, such deducted and withheld amount shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

ARTICLE III
REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANY

Except as set forth in the Company Disclosure Schedule delivered by the Company to Buyer, which shall be arranged by section and subsection of this ARTICLE III and shall qualify only the respective section or subsection referenced therein, the Company hereby represents and warrants to Buyer as of the date hereof and as of the First Merger Effective Time, as though made at the First Merger Effective Time, as follows:

3.1 Organization and Qualification of the Company.

(a) The Company is a corporation duly incorporated, validly existing and in good standing under, and by virtue of, the Laws of the State of Texas. The Company has the requisite corporate power and all lawful authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and as currently proposed to be conducted. The Company is qualified or licensed to do business and is in good standing in each jurisdiction where the character of its properties or the nature of its business makes such qualification or licensing necessary, except such other jurisdictions where the failure to be so qualified or licensed or in good standing would not reasonably be expected to have a Company Material Adverse Effect. Schedule 3.1 sets forth a complete and correct list of all jurisdictions in which the Company is qualified or licensed to do business.

(b) The Company does not have any Subsidiaries. The Company does not control, directly or indirectly, or have any direct or indirect equity participation in, any corporation, partnership, limited partnership, limited liability company, trust or other business association.

3.2 Authority and Validity. The Company has all requisite corporate power and all lawful authority to execute and deliver this Agreement and each Transaction Document to which it is a party, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. The execution and delivery by the Company of this Agreement and the Transaction Documents to which it is a party, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby, including the filing of the Certificates of Merger, shall have been duly and validly authorized by all necessary corporate action in respect thereof on the part of the Company as of the date of such occurrence. Other than obtaining the Required Stockholder Approval, no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery by the Company of this Agreement and the Transaction Documents to which it is a party or the performance by the Company of its obligations hereunder or thereunder. This Agreement is, and each of the Transaction Documents to which the Company is a party has been, or, at the Closing will be, duly and validly executed and delivered by the Company. This Agreement constitutes, and each of the Transaction Documents to which the Company is a party when executed will constitute, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Laws affecting creditors' rights and remedies generally or by general equitable principles (whether applied by a court of law or equity).

3.3 Charter Documents; Corporate Records. The Company has previously delivered to Buyer true, correct and complete copies of its articles of incorporation and bylaws as in effect as of the date of this Agreement. The minutes of directors' and stockholders' meetings and the stock books of the Company that have previously been delivered to Buyer are the true, substantially complete and correct records of such meetings and stock issuances through and including the date of this Agreement.

3.4 No Conflicts. Neither the execution and delivery of this Agreement or any of the Transaction Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby, nor the performance by the Company of its obligations hereunder or thereunder will, with or without the giving of notice or the lapse of time, or both: (a) violate or conflict with any of the provisions of the articles of incorporation or bylaws of the Company; (b) violate, conflict with, result in a breach or default under, or cause the termination or acceleration of any mortgage, indenture, contract, license, permit, instrument, trust document or other agreement or document to which the Company is a party or by which the Company or any of its assets or properties may be bound; (c) violate any provision of any Law to which the Company is subject; (d) violate any Order applicable to

the Company; (e) result in the revocation or suspension of any Company Permit; or (f) result in the creation or imposition of any Lien upon any properties or assets of the Company, except, in the case of clauses (b) and (e), for violations, conflicts, defaults and breaches that would not, individually or in the aggregate, result in a Company Material Adverse Effect.

3.5 Consents and Approvals. No consent, approval or authorization of, filing or registration with, or notice to, any Governmental Authority or other Person is required to be made or obtained by the Company in connection with the execution and delivery by the Company of this Agreement or the Transaction Documents to which the Company is a party, the consummation of the transactions contemplated hereby or thereby or the performance by the Company of its obligations hereunder or thereunder.

3.6 Capitalization.

(a) (i) The authorized Capital Stock of the Company, (ii) the number of outstanding shares of each class or series of Capital Stock of the Company, (iii) the names and principal place of business of the holders of the outstanding shares of each class or series of Capital Stock of the Company, as reflected in the records of the Company, and (iv) the number and type of shares each class or series of Capital Stock of the Company held by each are set forth in Schedule 3.6(a). With respect to each Company Option, Schedule 3.6(a) sets forth, with respect to each Company Option, the number of the underlying shares of the Company Common Stock, the date of grant or issuance, as applicable, the terms of vesting (including accelerated vesting) and the applicable exercise price thereof. All of the Company Options have been issued pursuant to the Option Plan and the Company's standard stock option grant agreement, copies of which have been provided to the Buyer. The per share exercise price of all outstanding Company Options is less than the Closing Cash Per Share Amount.

(b) All of the issued and outstanding shares of Capital Stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable with no personal liability attached to the ownership thereof. Except for the Company Options set forth in Schedule 3.6(a), there are no: (i) outstanding subscriptions, options, warrants, calls, contracts, demands, commitments or other agreements or arrangements of any character or nature whatsoever under or pursuant to which the Company is or may become obligated to issue any shares of its capital stock; (ii) outstanding obligations (contingent or otherwise) of the Company to purchase, redeem or otherwise acquire any shares of its Capital Stock or any interest therein or to pay any dividend or make any distribution in respect thereof; (iii) outstanding or authorized stock or interest appreciation, phantom stock or interest or similar rights with respect to the Company; or (iv) outstanding obligations (contingent or otherwise) of the Company to issue any subscription, option, warrant, convertible security or other such right. All of the issued and outstanding shares of capital stock of the Company have been issued in compliance with all applicable state corporation Laws, and all federal and state securities Laws, and were issued, transferred and repurchased in accordance with any right of final refusal, pre-emptive right or similar right or limitation including those in the Company's articles of incorporation.

(c) There are no shares of Capital Stock of the Company held in the Company's treasury, and the Company has never redeemed or repurchased any shares of its Capital Stock.

(d) Except as set forth in Schedule 3.6(d), there are no outstanding loans made by the Company to any Company Party.

(e) There are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company. There are no agreements to which the Company is a party

relating to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or "drag-along" rights) of any Company Stock.

3.7 Financial Statements.

(a) (i) The Company has delivered to Buyer correct and complete copies of its (x) audited balance sheet and related statements of income, retained earnings and cash flows for the fiscal year ended December 31, 2011, and (y) unaudited balance sheets and related statements of income, retained earnings and cash flows for each of the fiscal years ended December 31, 2012 and 2013 (collectively, the "**Company Historical Financial Statements**"); and (ii) the Company has delivered to Buyer its unaudited balance sheet and related statements of income, retained earnings and cash flows for the ten (10) month period ended October 31, 2014 (the "**Company Interim Financial Statements**" and together with the Company Historical Financial Statements, the "**Company Financial Statements**"). The Company's unaudited balance sheet as of October 31, 2014 included in the Company Financial Statements is referred to herein as the "**Company Last Balance Sheet**", and contains an accurate accounting, as of the date thereof, of the Company's assets and liabilities, each as calculated in accordance with GAAP and in a manner consistent with historical past practice.

(b) The Company Financial Statements (i) were prepared from the books and records of the Company; (ii) present fairly in all material respects the financial condition and results of operations and cash flows of the Company, as of the date or dates and for the period or periods therein specified and (iii) have been prepared in accordance with GAAP applied on a consistent basis, except that the Company Interim Financial Statements include all required accruals under GAAP but may not contain notes and are subject to normal recurring year-end adjustments which, in the aggregate, will not be material.

(c) The Company has records that accurately and validly reflect its transactions and maintains a system of internal controls over financial reporting designed to reasonably ensure that such transactions are (i) in all material respects executed in accordance with its management's general or specific authorization and (ii) recorded in conformity with GAAP. The Company maintains a standard system of accounting established and administered in accordance with GAAP.

3.8 Absence of Undisclosed Liabilities. There are no Liabilities of the Company of the type to be reflected or disclosed in a balance sheet, other than Liabilities: (a) provided for or reserved against in the Company Last Balance Sheet; (b) incurred since the date of the Company Last Balance Sheet in the ordinary course of business consistent with past practice (provided that such liabilities and obligations are not material individually or in the aggregate) and not arising out of violation of Law, breach of contract, breach of warranty, infringement claim or lawsuit or tort; (c) that are set forth in Schedule 3.8; or (d) incurred in connection with the transactions contemplated by this Agreement or the Transaction Documents. To the extent required by GAAP, sufficient reserves are reflected on the Company Last Balance Sheet against all material Liabilities of the Company as of October 31, 2014, in amounts that have been established on a basis consistent with past practices of the Company and otherwise in accordance with GAAP.

3.9 Absence of Certain Changes. Except as set forth in Schedule 3.9 or as specifically contemplated by this Agreement or the Transaction Documents, since December 31, 2013 there has not been:

(a) any change in the financial condition or business of the Company which has had, or would reasonably be expected to have, a Company Material Adverse Effect;

(b) any merger or consolidation or agreement to merge or consolidate with any other Person involving the Company or any acquisition of, or agreement to sell or acquire, any substantial part of the stock, business, property or assets of the Company or any other Person, to which the Company was a party;

(c) any issuance of any shares of Capital Stock of the Company or any options, warrants or other rights to acquire any shares of Capital Stock of the Company;

(d) (i) any declaration, setting aside or payment of any dividend or other distribution with respect to, or any repurchase, redemption or other acquisition of, any of its Capital Stock other than tax distributions or (ii) any transaction agreed to or performed with, or for the benefit of, or made any payments to, any officer, director, Company Party or Related Person of any of them;

(e) any split, combination or reclassification of any outstanding shares of the Company's capital stock or any issuance or authorization of any other securities or interests in respect of, in lieu of or in substitution for the outstanding shares of the Company's Capital Stock;

(f) any change in any method of accounting or accounting practice used by the Company, except as required by Law or resulting from a change in GAAP;

(g) any increase in compensation, bonus or other benefits payable or to become payable by the Company to any of the directors, officers or employees of the Company (other than routine increases in the ordinary course of business consistent with past practices of no more than three percent (3%) of base pay);

(h) any capital expenditure (or series of related capital expenditures) either involving more than $25,000 or outside the ordinary course of business;

(i) any acceleration, termination, material modification or cancellation of any agreement, contract, lease or license (or series of related agreements, contracts, leases and licenses) involving annual revenues or annual payments of more than $25,000 per individual contract or more than $50,000 in the aggregate to which the Company is a party or by which it is bound;

(j) any making by the Company of any loan or advance to any employee, officer or director of, or consultant to, the Company, or to any Stockholder, or to a Related Person of any of them other than travel expenses and other advances made in the ordinary course of business;

(k) any delay or postponement of the payment of accounts payable and other Liabilities in each case outside the ordinary course of business;

(l) any damage, destruction or loss (whether or not covered by insurance) in excess of $25,000 to any asset or property of the Company, tangible or intangible;

(m) any discharge of a Liability or Lien outside the ordinary course of business;

(n) any imposition of any Lien, other than Permitted Liens, upon the Company's assets or properties, tangible or intangible;

(o) any sale, lease, abandonment or other disposition of the Company's properties or assets having a value, individually or in the aggregate, in excess of $25,000, except in the ordinary course of business; or

(p) any Contract to do any of the things referred to in this Section 3.9.

3.10 Taxes.

(a) The Company has timely filed with the appropriate Governmental Authorities all Tax Returns required to have been filed by it with respect to all applicable Taxes. All of such Tax Returns are accurate and complete. The Company has paid in full all Taxes required to have been paid by it, whether or not shown on a Tax Return. Except as set forth in Schedule 3.10, no written claim has ever been made by a Governmental Authority for a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to Tax in that jurisdiction.

(b) All Taxes required to have been paid, withheld or collected by the Company in connection with any amounts paid or accruing to any employee, independent contractor, creditor, stockholder or other third party, including income Taxes, social security Taxes, unemployment insurance Taxes and other withholding Taxes, have been so withheld or collected, and to the extent required to have been paid over to a relevant Governmental Authority have been so paid and if not yet due and payable, accrued as a liability on the Company Last Balance Sheet to the extent withheld or collected on or before October 31, 2014.

(c) The Company has not received from any Governmental Authority (i) any written notice indicating an intent to open an audit, examination or other review of any Tax Return of the Company, (ii) any written notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any Governmental Authority against the Company, or (iii) any written notice regarding or related to any Taxes that could reasonably be expected to result in assertion of a claim against the Company for any material amount of unpaid Taxes. To the Knowledge of the Company, there are no existing circumstances which reasonably should be expected to result in the assertion of a claim by any Governmental Authority that the Company has unsatisfied Tax obligations with respect to any taxable period for which Tax is required to have been collected or paid by the Company. There is no audit, examination, claim, action, suit, proceeding, inquiry, investigation or litigation with respect to any Tax or Tax Return of the Company that is currently in progress or pending.

(d) The Company has not requested or received any extension of time within which to file any Tax Return which Tax Return has not since been filed, nor has the Company executed any written consent to any waivers or extensions of any statute of limitations with respect to any taxable year of the Company or providing for an extension of time with respect to the assessment or collection of any Taxes against the Company. No power of attorney granted by the Company with respect to any Tax matters is currently in force (other than authorizations to contact Tax Return preparers included in Tax Returns of the Company). There are no Liens for Taxes upon any of the assets or properties of the Company, other than with respect to Taxes not yet due and payable.

(e) The Company has delivered or made available to Buyer or its representatives for inspection complete and correct copies of all income and other Tax Returns filed by the Company with any Governmental Authority, and all written communications with any Governmental Authority relating to such Tax Returns, for each taxable year ended on or after December 31, 2010. Schedule 3.10(e) sets forth a complete list of all jurisdictions in which the Company has filed Tax Returns and the type of Tax Returns filed in such jurisdiction.

(f) The unpaid Taxes of the Company (i) did not, as of October 31, 2014, exceed the reserve for Tax liability (rather than any reserve for deferred taxes established to reflect timing differences between book and tax income) set forth on the face of the Company Last Balance Sheet (rather than in any notes thereto), and (ii) will not exceed that reserve as adjusted for operations and

transactions in the ordinary course through the Closing Date in accordance with the past custom and practice of the Company in filing its Tax Returns.

(g) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(h) The Company (i) has never been a member of an affiliated group (within the meaning of Section 1504(a) of the Code) or similar group of entities with which the Company joined, or was or may be required to join, for any taxable period in filing a consolidated federal income Tax Return or other Tax Return in which Tax Liability was or would be computed on a group filing on a consolidated, combined, unitary or similar basis, and (ii) has no Liability for the Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law), as a transferee or successor, by contract or otherwise.

(i) The Company has not distributed stock of another Person, or had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

(j) The Company is not a party to, and does not have any obligation or liability under, any Tax sharing agreements, Tax indemnity agreements ,Tax distribution agreements or similar agreements with the principal purpose of providing for the allocation, apportionment, sharing or assignment of any Tax liability or benefit.

(k) The Company is not a party to any joint venture, partnership or other arrangement that is treated as a partnership for U.S. federal income tax purposes.

(l) The Company has not made, and is not required to make, any change in accounting methods previously used by it in any Tax Return filed by the Company that would require the Company to make a positive adjustment to its income pursuant to Section 481 of the Code (or similar provisions of state, local, or foreign Law) for any taxable period for which the Company has not yet filed a Tax Return, and neither the Internal Revenue Service (the "**IRS**") nor any Taxing Authority has proposed in writing any changes in the accounting methods of the Company that would require such an adjustment.

(m) None of the assets or properties of the Company is (i) Tax-exempt use property under Section 168(h) of the Code; (ii) Tax-exempt bond financed property under Section 168(g) of the Code; (iii) limited use property under Revenue Procedure 2001-28; or (iv) treated as owned by any Person, other than the Company, under Section 168 of the Code.

(n) The Company 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 "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law) executed on or prior to the Closing Date or include any item in gross income in a taxable year beginning after the Closing Date as of result of any: (i) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code occurring on or prior to the Closing Date; (ii) installment sale or open transaction disposition occurring on or prior to the Closing Date; (iii) prepaid amount received on or prior to the Closing Date; or (iv) election pursuant to Section 108(i) of the Code made effective on or before the Closing Date.

(o) The Company has not entered into any "listed transactions" as defined in Treasury Regulations Section 1.6011-4(b)(2) that was, is, or to the knowledge of the Company will ever be, required to be disclosed under Treasury Regulations Section 1.6011-4, and the Company has properly disclosed all reportable transactions as required by Treasury Regulations Section 1.6011-4, including filing Form 8886 with its Tax Returns and with the Office of Tax Shelter Analysis.

(p) The Company has been a validly electing S corporation within the meanings of Sections 1361 and 1362 of the Code ("**S Corporation**") at all times since the date of its formation and has not since that date acquired an asset from a C corporation in the circumstances described in Section 1374(d)(8) of the Code. The Company's Subchapter S election is currently effective, will be effective until the end of the day immediately preceding the Closing Date, and no event has occurred that would terminate the Company's status as an S Corporation. With respect to all states in which the Company has or has had operations, which for state Tax purposes allow a corporation to be treated as an S Corporation or similar entity entitled to special Tax treatment, all elections for such treatment have been properly and validly made in such states and the Company has maintained compliance at all times with all applicable qualifications and filing procedures for such treatment. No Taxing Authority has challenged the effectiveness of the Company's status as an S Corporation. The Company has no liability (or potential liability) for Taxes under Sections 1374 and 1375 of the Code (and any similar provision of foreign, state, or local Law).

(q) The Company has not taken any action or knows of any fact or circumstance that could reasonably be expected to prevent the Mergers from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

3.11 Accounts Receivable; Accounts Payable.

(a) Schedule 3.11 sets forth an aged list of the Accounts Receivable at October 31, 2014. All such Accounts Receivable, and all Accounts Receivable which have arisen since October 31, 2014, are valid receivables, not subject to any valid counterclaims or set-offs, at the aggregate recorded amount thereof as shown in Schedule 3.11, net of the recorded amount of allowances for doubtful accounts and returns computed in a manner consistent with the accounting practices used in the preparation of the Company Last Balance Sheet. Reserves with respect to Accounts Receivables have been reflected on the books and Company Financial Statements in accordance with GAAP and in amounts consistent with past practices. The Accounts Receivable outstanding on the date hereof do, and the Accounts Receivable outstanding on the Closing Date will, represent sales actually made or services actually performed in the ordinary course of business in bona fide, arms-length transactions completed in accordance with the terms and provisions contained in any documents relating thereto. Unless paid prior to the Closing Date, such Accounts Receivable are or will be as of the Closing Date collectible, without offset or counterclaim, net of the respective reserves shown on the Company Financial Statements. The Company has not factored or discounted, or agreed to factor or discount, any Accounts Receivable.

(b) All accounts payable of the Company which are reflected in the Company Interim Financial Statements and all such accounts payables which have arisen since the date thereof, have arisen only from bona fide transactions in the ordinary course of business and in compliance with applicable Laws and no such accounts payable are delinquent in their payment, except for accounts payable as to which (i) the Company is contesting in good faith and through appropriate procedures its obligation to pay, or (ii) for which appropriate reserves are reflected in the Company Interim Financial Statements. Except as set forth in Schedule 3.11(b), any accounts payable which have arisen since the date of the Company Interim Financial Statements do not exceed $50,000 in the aggregate.

3.12 Officers, Directors and Employees; Labor Relations.

(a) Schedule 3.12 sets forth a complete and correct list of (i) the current officers and directors of the Company and the total compensation, including bonuses, of each such officer and director of the Company; (ii) the name of each other current employee, including each employee on leave of absence or layoff status, consultant or independent contractor of the Company who received $50,000 or more in any form of compensation from the Company in the Company's most recent fiscal year and/or is expected to receive in excess of $50,000 during the current fiscal year (each, an "**Employee/Consultant**"); (iii) any commitment or agreement made by the Company to increase wages or to modify the conditions or terms of retention by the Company of any of the Persons referred to in clauses (i) or (ii) above; and (iv) any notice of termination of employment or resignation since December 31, 2013 given by any Employee/Consultant or any officer or director of the Company. There is no pending or, to the Knowledge of the Company, threatened, resignation or termination of employment of any employee of the Company whose annual compensation (exclusive of bonus) as of the date of this Agreement exceeds $50,000.

(b) The Company is currently and at all times has been in compliance in all material respects with all Laws relating to employment and employment practices, equal employment opportunity, nondiscrimination, immigration, wages, hours, collective bargaining, occupational safety and health, and plant closing. The Company is not liable for the payment of any compensation, damages, Taxes, fines, penalties, or other amounts, however designated, for any failure to comply with any of the foregoing Laws. No unfair labor practice complaint, or other grievance procedure, audit or investigation against the Company is pending before the National Labor Relations Board, the Equal Employment Opportunity Commission, the United States Department of Labor or any state agency counterpart to the foregoing federal agencies.

(c) The Company has not been the subject of any union organizing activity, or strike or labor unrest during the past five (5) years. The Company has no agreement with any union or collective bargaining group. There is no formal dispute, grievance, controversy or request for union representation pending or, to the Knowledge of the Company, threatened against the Company by any employees of the Company.

(d) No employee of the Company has any contractual right to continued employment by the Company other than as an at-will employee under applicable state Law.

(e) None of the Company's executive officers or directors and, to the Knowledge of the Company, none of the Company's employees is obligated under any Contract, including licenses, covenants or commitments of any nature, or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with their duties to the Company or that would conflict with the Company's business as currently conducted. To the Knowledge of the Company, neither the execution nor delivery of this Agreement will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of the Company's executive officers or directors or employees is now obligated.

3.13 Litigation. Except as set forth on Schedule 3.13, since January 1, 2009 there has not been any claim, action, suit, proceeding, inquiry or investigation pending or, to the Knowledge of the Company, threatened, and there is no claim, action, suit, proceeding, inquiry or investigation pending or, to the Knowledge of the Company, threatened, in each case against or affecting the Company or its assets or properties (whether or not covered by insurance). There is no Order outstanding against the Company or by which its properties or assets are bound or affected.

3.14 Compliance with Laws; Company Permits.

(a) The business and operations of the Company have been conducted in compliance, and are currently in compliance, with all applicable Laws and Orders. The Company has in place physical, electronic and procedural safeguards with respect to customer information, privacy and data security necessary to comply with applicable Laws. Neither the Company nor, to the Knowledge of the Company, any of its officers or directors has been charged with or, to the Knowledge of the Company, is now under investigation with respect to, a violation of any applicable Law, Order or other requirement of a Governmental Authority related to the Company or its business.

(b) The Company has all material permits, certificates, licenses, registrations, certifications, classifications, consents, qualifications, approvals and other authorizations (collectively, "**Company Permits**") required in connection with the operation of its business as currently conducted and as currently contemplated to be conducted. Schedule 3.14 sets forth a list of all Company Permits. All Company Permits are non-probationary and non-provisional and in full force and effect and none of the Company Permits will be terminated or impaired or become terminable as a result of the transactions contemplated by this Agreement or any of the other Transaction Documents. The Company is in compliance with all terms and conditions of all Company Permits that it holds. There are no pending actions or proceedings to revoke, withdraw, terminate or suspend any Company Permit, and the Company has not received any written notice or, to the Knowledge of the Company, other communication threatening any of the foregoing. The Company is not aware of any actions that must be taken by the Company (or the Surviving Company) within 90 days following the Closing Date, that, if not taken, would result in the termination or impairment of any Company Permit. The Company is not in default under and, to the Knowledge of the Company, no condition exists that with notice or lapse of time or both would reasonably be expected to constitute a default or violation under any Company Permit.

3.15 Title to Assets; Absence of Encumbrances; Inventory.

(a) The Company has good, valid and marketable title to, or, in the case of property held under a lease, a valid and enforceable leasehold interest in, or right to use, all of its properties and assets, including all of the properties and assets shown on the Company Last Balance Sheet or acquired after December 31, 2013, in each case free and clear of all Liens, other than Permitted Liens.

(b) All of the properties and assets owned or leased by the Company are adequate and sufficient for the current operations of the business of the Company and such properties and assets now being used by the Company in its business and operations, whether leased or owned, are in good working order and repair (reasonable wear and tear excepted) and none of such properties or assets is in need of maintenance and repairs, except for ordinary routine maintenance and repairs that are not material in nature or cost. The assets owned or leased by the Company (including real, personal, tangible and intangible property) constitute all of the assets held for use or used in connection with the Company's business and are sufficient to conduct the business of the Company as presently conducted and as proposed to be conducted.

(c) The inventory of the Company is valued on the Company Financial Statements in accordance with GAAP applied on a basis consistent with past practices. All such inventory is of a quality and quantity usable or saleable in the ordinary course of business, subject only to the reserve for obsolescence reflected in the Company Financial Statements.

3.16 Real Property; Leases. The Company does not own, and has never owned, any Company Real Property. Schedule 3.16 accurately lists and identifies all real property currently leased or otherwise used by the Company (the "**Leased Real Property**"). All leases of the Leased Real Property are valid,

binding, and enforceable against the Company in accordance with their respective terms and the Company is a tenant or possessor in good standing thereunder and all rents due under such leases have been paid. There does not exist under any such lease any default or, to the Knowledge of the Company, any event which with notice or lapse of time, or both, would reasonably be expected to constitute a default under the leases with respect to the Leased Real Property. The Company is in peaceful and undisturbed possession of the space and/or estate under each of its leases to which it is a tenant and has good and valid rights of ingress to and egress from all such Leased Real Property and to the public street systems for all usual street, road, and utility purposes. Neither the Company nor any of its Affiliates is a landlord or sublessor under any lease relating to Leased Real Property. The Company has not received any written notice of any violation with respect to any applicable Law relating to or affecting the Leased Real Property. The Company has not received any written notice of any appropriation, condemnation, or like proceeding, or of any violation of any applicable zoning Law or Order relating to or affecting the Leased Real Property, and to the Knowledge of the Company, no such proceeding has been threatened or commenced. The Company has not received any written notice of any pending or threatened foreclosure proceedings against any landlord entity with respect to the Leased Real Property that could adversely impact the rights of the Company as tenant to continue possession of the Leased Real Property. The Real Property is in suitable operating condition and repair (reasonable wear and tear excepted) and none of such Real Property is in need of maintenance and repairs, except for ordinary routine maintenance and repairs that are not material in nature or cost.

3.17 Intellectual Property Rights.

(a) Company Products and Technology. Schedule 3.17(a)(i) lists all Company Products by name and version number, as applicable. Schedule 3.17(a)(ii) Schedule lists all third party Software (except for Shrink-Wrap Code) by name and version number, as applicable, that is included in the Company Products or is used in the conduct of the business of the Company as currently conducted and, in each case of Schedule 3.17(a)(i) and (ii), specifies whether such Company Product is owned or licensed by the Company or otherwise provided by third parties.

(b) Intellectual Property. Schedule 3.17(b) lists (i) all Company Registered Intellectual Property and all material unregistered Trademarks used by the Company, (ii) all other material Software that is part of the Company Intellectual Property, including invention disclosures, (iii) any actions that must be taken by the Company within ninety (90) days of this Agreement with respect to the Company Registered Intellectual Property, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates, and (iv) any proceedings or actions pending, or to the Knowledge of the Company, threatened before any court, arbiter or tribunal (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) to which the Company is or was a party and in which claims are or were raised relating to the validity, enforceability, scope, ownership or Infringement of any of the Company Registered Intellectual Property. With respect to each item of Company Registered Intellectual Property: (A) all necessary registration, maintenance and renewal fees have been paid, and all necessary documents and certificates have been filed with the relevant Patent, copyright, trademark or other authorities or registrars in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining the Company's Registered Intellectual Property Rights; (B) each such item is currently in compliance with formal legal requirements (including payment of filing, examination and maintenance fees and proofs of use); (C) each such item is subsisting, and to the Knowledge of the Company, is valid and enforceable; and (D) each such item is not subject to any unpaid maintenance fees or taxes. Except as set forth in Schedule 3.17(b), there are no actions that must be taken by the Company within ninety (90) days of the date of this Agreement, with respect to each item of Company Registered Intellectual Property, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of maintaining, perfecting, preserving or renewing any such Company

Registered Intellectual Property. To the Knowledge of the Company, there are no facts, information, or circumstances, including any information or facts that would constitute prior art (with respect to Patents) or prior use (with respect to Trademarks), that would render any of the Company Registered Intellectual Property invalid or unenforceable, or would affect any pending application for any Company Registered Intellectual Property. To the Knowledge of the Company, the Company has not misrepresented, or failed to disclose, any facts or circumstances in any application for any Company Registered Intellectual Property or in the prosecution of such application that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the enforceability of any Company Registered Intellectual Property.

(c) Transferability of Intellectual Property. Following the Closing, all Company Intellectual Property will be fully transferable, alienable and licensable by the Surviving Company or Buyer without restriction and without payment of any kind, or any obligation, to any third party to the same extent that such Company Intellectual Property is transferable, alienable and licensable by the Company prior to the Closing.

(d) Title to Intellectual Property. Except as set forth in Schedule 3.17(d), the Company is the sole and exclusive owner of each item of Company Intellectual Property and of each Company Product, free and clear of any Liens other than Permitted Liens. The Company has the sole and exclusive right to bring a claim or suit against a third party for past, present or future Infringement of the Company Intellectual Property that is solely or jointly owned by the Company and to retain for itself any damages recovered in any such action. Other than as set forth in Schedule 3.17(d), the Company has not (i) granted any exclusive license with respect to, any Company Intellectual Property to any other Person, or (ii) done any act or failed to take any action that could cause the rights of the Company in any Company Intellectual Property to enter into the public domain.

(e) Third Party Intellectual Property. Schedule 3.17(e) lists all Contracts under which a third party licenses or provides any Intellectual Property (including covenants not to sue, non-assertion provisions or releases or immunities from suit that relate to Intellectual Property) to the Company, excluding any licenses for Shrink-Wrap Code or for Open Source Software. Other than Intellectual Property licensed to the Company under (i) licenses for the Open Source Software listed in Schedule 3.17(n), (ii) licenses for Shrink-Wrap Code and (iii) the licenses set forth in Schedule 3.17(e), no third party Intellectual Property is used in the conduct of the business of the Company as it currently is conducted by the Company, including the design, development, manufacture, use, marketing, import for resale, distribution, licensing out and sale of all Company Products.

(f) Standard Form Agreements. Copies of the Company's current standard form(s) of non-disclosure agreement and the Company's current standard form(s), including attachments, of non-exclusive licenses of the Company Products to end-users, including terms of use (collectively, the "**Standard Form Agreements**") are attached to Schedule 3.17(f). Copies of the prior versions of the Standard Form Agreements have been provided to Buyer. Other than non-disclosure agreements and non-exclusive licenses of the Company Products to end-users that do not materially differ in substance from the Standard Form Agreements or prior versions thereof and that have been entered into in the ordinary course of business, Schedule 3.17(f) lists all Contracts under which the Company has granted, licensed, disclosed or provided any Company Intellectual Property to third parties (other than rights granted to contractors, consultants or vendors to use Company Intellectual Property for the sole benefit of the Company), including any Contracts containing covenants not to sue, non-assertion provisions, or releases or immunities from suit that relate to Intellectual Property, including in each case in this sentence, the option to do any of the foregoing.

(g) No Infringement. The operation of the business of the Company as it has been conducted prior to the date hereof, as currently conducted and the design, development, use, import, branding, advertising, promotion, marketing, manufacture, sale, offer for sale, provision, distribution and licensing out of any Company Product, has not, does not, and, when conducted in the same manner by Buyer or the Surviving Company following the Closing, will not Infringe any Intellectual Property Rights of any Person. Other than as set forth in Schedule 3.17(g), the Company has not received notice from any Person claiming that such operation or any act or any Company Product or any Company Intellectual Property Infringes or Infringed any Intellectual Property Rights of any Person (nor does the Company have Knowledge of any bona fide basis therefor or threat thereof). No Company Product or Company Intellectual Property is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, provision, transfer, assignment or licensing thereof by the Company or may affect the validity, registrability, use or enforceability of such Company Product or Company Intellectual Property.

(h) Third Party Rights. Other than set forth in Schedule 3.17(h) or Schedule 3.17(e), no third party that has licensed (including by means of covenant not to sue) or provided Intellectual Property to the Company has retained ownership of any Intellectual Property in any modifications, improvements or derivative works made solely or jointly by the Company, and no such third party has a license to any such modifications, improvements or derivative works.

(i) Restrictions on Business. Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Buyer or the Surviving Company by operation of law or otherwise of any Contracts to which the Company is a party, will cause, other than to the extent that the Company and its Affiliates would be required or subject to absent this Agreement or the Closing: (i) Buyer or any of its affiliates or the Company to grant to any third party any right to or with respect to any Intellectual Property owned by, or licensed to, any of them, (ii) Buyer, any of its affiliates or the Company to be bound by, or subject to, any non-compete, non-solicit or other restriction on the operation or scope of their respective businesses or (iii) Buyer, any of its affiliates or the Company to be obligated to pay any royalties or other fees or consideration with respect to Intellectual Property of any third party in excess of those payable by the Company in the absence of this Agreement or the transactions contemplated hereby.

(j) No Third Party Infringement. To the Knowledge of the Company, other than as set forth in Schedule 3.17(j), no Person has Infringed any Company Intellectual Property.

(k) Proprietary Information Agreements. Copies of the Company's current and past standard form of proprietary information, confidentiality and assignment agreement for employees (the "**Employee Proprietary Information Agreement**") and the Company's current standard form of consulting agreement containing proprietary information, confidentiality and assignment provisions for consultants or contractors (the "**Consultant Proprietary Information Agreement**") are attached to Schedule 3.17(k). Copies of the prior versions of the Employee Proprietary Information Agreement and Consultant Proprietary Information Agreement have been provided to Buyer. Other than set forth in Schedule 3.17(k), each (i) current and former employee of the Company, (ii) current and former consultant or contractor of the Company and (iii) individual who has been involved in the creation, invention or development of Intellectual Property or Company Products for or on behalf of the Company (each, a "**Contributor**"), has executed and delivered (and to the Knowledge of the Company is in compliance with) the applicable form of Employee Proprietary Information Agreement or Consultant Proprietary Information Agreement that does not deviate in any material respect from such standard forms or the predecessor version of such forms. Without limiting the foregoing, other than as set forth in Schedule 3.17(k), no Contributor owns or has any right, claim, interest or option, including the right to further remuneration or consideration, with respect to Company Products or Company Intellectual

Property, nor has any Contributor made any assertions with respect to any alleged ownership or any such right, claim, interest or option, nor threatened any such assertion; and neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Buyer or the Surviving Company by operation of law or otherwise of any Contracts to which the Company is a party, will provide any Contributor with any such right, claim interest or option. All Contributors that are or were, at the time of employment or engagement by the Company, residents of countries that recognize Moral Rights, or whose employment relationships are or were governed by applicable Laws in countries that recognize Moral Rights, have executed written agreements with the Company that, to the fullest extent permitted under applicable Law, waive for the benefit of the Company all Moral Rights relating to the business of the Company.

(l) Protection of Confidential Information. The Company has taken commercially reasonable steps to protect the confidentiality of confidential information and trade secrets of the Company, and any third party that has provided any confidential information or trade secrets to the Company.

(m) No Government Funds. No funding, facilities or resources of any government, university, college, other educational institution, multi-national, bi-national or international organization or research center was used in the development of the Company Products or Company Intellectual Property.

(n) Open Source Software. Schedule 3.17(n) lists all Open Source Software that currently is incorporated into, integrated with, combined with or linked to any Company Product or Company Intellectual Property in any way, or from which any Company Product or Company Intellectual Property was derived, and describes the manner in which each such Open Source Software was incorporated into, integrated with, combined with or linked to any such Company Product or Company Intellectual Property (such description shall include whether (and, if so, how) the Open Source Software was modified, distributed, conveyed or licensed out by the Company). The Company has not used Open Source Software in any manner that would, with respect to any Company Product or any Company Intellectual Property, (i) require its disclosure or distribution in source code form, (ii) require the licensing thereof for the purpose of making derivative works, (iii) impose any restriction on the consideration to be charged for the use or distribution thereof, or (iv) grant, or purport to grant, to any third party, any rights or immunities under Company Intellectual Property other than to customers of the Company. With respect to any Open Source Software that is or has been used by the Company in any way, the Company has been and is in compliance with all applicable licenses with respect thereto.

(o) Source Code. Other than set forth in Schedule 3.17(o), neither the Company, nor any Person acting on its behalf has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any source code for any Company Product or Company Technology, except for disclosures to employees, contractors, vendors, or consultants under binding written agreements that prohibit use or disclosure except in the performance of services to the Company.

(p) Personally Identifiable Information. Schedule 3.17(p) identifies all categories of Personally Identifiable Information collected by the Company through Internet websites owned, maintained or operated by the Company ("**Company Sites**"), through any Company Products, or through any other means. The Company has complied with all applicable Laws, contractual and fiduciary obligations, and the Company's privacy policies relating to (i) the privacy of users of Company Sites and (ii) the collection, storage, use, transfer and any other processing of any Personally Identifiable Information collected or used by the Company in any manner or maintained by third parties having authorized access to such information. The execution, delivery and performance of this Agreement

comply with all applicable Laws relating to privacy and with the Company's privacy policies. Copies of all current privacy policies of the Company that apply to the Company Sites or the Company Products are attached to Schedule 3.17(p). Each such privacy policy and all materials distributed or marketed by the Company have at all times made all disclosures to users or customers required by applicable Laws, and none of such disclosures made or contained in any such privacy policy or in any such materials has been materially inaccurate, misleading or deceptive or in violation of any applicable Laws.

(q) Protection of Personally Identifiable Information. The Company has at all times taken commercially reasonably steps (including implementing and monitoring compliance with respect to technical and physical security) to ensure that all Personally Identifiable Information is protected against loss and against unauthorized access, use, modification, disclosure or other misuse. To the Knowledge of the Company, there has been no unauthorized access to or loss, theft, or misuse of Personally Identifiable Information.

(r) Bugs and Defects. Schedule 3.17(r) sets forth the Company's current (as of the date hereof) list of known bugs maintained by its development or quality control groups with respect to the Company Products. To the Knowledge of the Company, the Company has disclosed in writing to Buyer all errors, bugs or defects with respect to any of the Company Products which materially adversely affect, or may reasonably be expected to materially adversely affect, the value, functionality or fitness for the intended purpose of such Company Products. Without limiting the generality of the foregoing, other than set forth in Schedule 3.17(r), to the Knowledge of the Company, (i) there are no material defects, malfunctions or nonconformities in any of the Company Products, and (ii) the Company has not been and is not required by any Governmental Authority to recall, or otherwise provide notices regarding the operation of, any Company Products.

(s) Contaminants. To the Knowledge of the Company, all Company Products are free of any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that permit unauthorized access or the unauthorized disablement or erasure of such Company Product, Company Technology or data or other software of users ("**Contaminants**"). The Company has taken the procedures specified in Schedule 3.17(s) to prevent the introduction of Contaminants into Company Products.

(t) Security Measures. The Company has taken the steps and procedures specified in Schedule 3.17(t) to protect the information technology systems used in connection with the operation of the Company. To the Knowledge of the Company, there have been no material unauthorized intrusions or breaches of the security of such information technology systems. The Company has the disaster recovery and security plans, procedures and facilities for the business specified in Schedule 3.17(t).

(u) User Documentation. All Company Products perform in all material respects in accordance with the current design specifications for such Company Products. The User Documentation associated with any Company Product contains no material errors, other than of a typographical nature. To the Knowledge of the Company, all installation services, programming services, integration services, repair services, maintenance services, support services, training services, upgrade services and other services that have been performed by the Company were performed in material conformity with all applicable Laws, regulations and Contracts.

(v) IBM Improvements and IBM Fixes. All IBM Fixes that have been or will be provided or made available in the Repository are owned by the Company pursuant to a valid and enforceable assignment. All IBM Fixes contained in or used in connection with any Company Products came from the Repository. The Company has a valid and enforceable license in and to all IBM Improvements that have been or will be provided or made available in the Repository sufficient for the

conduct of the Company's business as of the Closing and as contemplated by Buyer after the Closing, including, without limitation, the perpetual, irrevocable, non-terminable, fully-paid up rights to use, execute, reproduce, modify, create derivative works of, display, perform, sublicense and distribute the IBM Improvements. The IBM Improvements consist solely of regression testing software suites. The IBM Improvements are only utilized by the Company internally as a testing tool for the benefit of IBM and not used for the benefit of the Company itself or any other Company customer. Without limitation, (a) no IBM Improvements have been, and none is required to be, shipped, furnished, provided or made available to the Company's customers other than IBM and (b) no IBM Improvements are contained in or used in connection with any Company Products. The Company has maintained at all times and currently maintains a log that shows all changes to the Repository, including any additions to the code stored therein.

3.18 Bank Accounts; Officers and Directors. Schedule 3.18 sets forth a list of all of the Company's (a) bank accounts and other accounts with financial institutions and the Persons authorized to sign checks or who hold powers of attorney with respect to any of such accounts and (b) all of the Company's officers and directors as of the date hereof.

3.19 Employee Benefit Plans.

(a) Schedule 3.19(a) includes a complete list of all employee benefit plans, programs, policies, practices, or other arrangements providing compensation or benefits to any current or former employee, officer, director or independent contractor that are sponsored or maintained by the Company or with respect to which the Company has or may have any liability, including any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, any employee pension benefit plan within the meaning of Section 3(2) of ERISA and any bonus, incentive, deferred compensation, vacation, equity, severance, employment, workers' compensation, change of control or fringe benefit plan, program or agreement (each, a "**Plan**").

(b) With respect to each Plan, the Company has delivered or made available to Buyer a true, correct and complete copy of: (i) each writing constituting a part of such Plan; (ii) the three (3) most recent Annual Reports (Form 5500 Series) and accompanying schedules, if any; (iii) the current summary plan description and any material modifications thereto, if any, and (iv) the most recent IRS determination, opinion or advisory letter. Except as specifically provided in the foregoing documents delivered or made available to Buyer, or as disclosed in Schedule 3.19(b), there are no amendments to any Plan that have been adopted or approved nor has the Company undertaken to make any such amendments to any Plan or to adopt or approve any new Plan, except as may be required by applicable Law.

(c) Schedule 3.19(c) identifies each Plan that is intended to be a "qualified plan" within the meaning of Section 401(a) of the Code (each, a "**Qualified Plan**"). The Internal Revenue Service has issued a favorable EGTRRA determination letter, opinion or advisory letter with respect to each Qualified Plan and the related trust, such determination letter, opinion or advisory letter has not been revoked, and there are no existing circumstances nor any events that have occurred that could adversely affect the qualified status of any Qualified Plan or the related trust.

(d) With respect to each Plan, the Company has materially complied, and is in material compliance, with all provisions of ERISA, the Code and all Laws and regulations applicable to such Plans and each Plan has been administered in accordance with its terms.

(e) Each Plan that is an employee welfare benefit plan under Section 3(1) of ERISA is funded through an insurance company contract and is not a "welfare benefit fund" within the meaning of Section 419 of the Code. The Company does not have any liability for life, health, medical or other

welfare benefits to former employees or beneficiaries or dependents thereof, except for health continuation coverage as required by Section 4980B of the Code or Part 6 of Title I of ERISA and at no expense to the Company. No Plan is intended to meet the requirements of Code Section 501(c)(9). No Plan is a "Section 413(c) plan" (as defined in Treasury Regulation §1.413-2(a)) or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA). No Plan provides benefits to any employee working outside the United States.

(f) Neither the Company nor any ERISA Affiliate contributed to, has any obligation to contribute to, or has any Liability under or with respect to any Plan subject to Title IV of ERISA. There has been no prohibited transaction which would subject the Company, any ERISA Affiliate or any of the Plans, to a Tax or penalty on prohibited transactions imposed by ERISA or the Code. For purposes of this Agreement, "**ERISA Affiliate**" means, with respect to any entity, trade or business, any other entity, trade or business that is a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes the first entity, trade or business, or that is a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

(g) There are no pending or, to the Knowledge of the Company, threatened, claims (other than claims for benefits in the ordinary course), lawsuits, investigations or arbitrations which have been asserted or instituted, and, to the Knowledge of the Company, no set of circumstances exists which may give rise to a claim, investigation, or lawsuit, which could reasonably be expected to result in any Liability of the Company to the Department of Treasury, the Department of Labor, any Plan or any participant in a Plan.

(h) With respect to each Plan, (i) all required or declared payments, premiums, contributions, reimbursements or accruals for all periods ending prior to or as of the Closing Date have been made or properly accrued on the Company Last Balance Sheet or with respect to accruals properly made after the date of the Company Last Balance Sheet, on the books and records of the Company, and (ii) there is no unfunded Liability relating to any Plan which is not reflected on the Company Last Balance Sheet or, with respect to accruals properly made after the date of the Company Last Balance Sheet, on the books and records of the Company.

(i) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereunder (either alone or in conjunction with any other event) will (i) result in any payment (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director or employee of the Company from the Company, under any Plan or otherwise; (ii) increase any benefits otherwise payable under any Plan or otherwise; or (iii) result in the acceleration of the time of payment or vesting of any such benefits. No benefit or amount payable or which may become payable by the Company or any ERISA Affiliate pursuant to any Plan, agreement or contract with any employee shall constitute an "excess parachute payment" within the meaning of Section 280G of the Code, which is or may be subject to the imposition of an excise tax under Section 4999 of the Code or which would not be deductible by reason of Section 280G of the Code.

(j) Each Plan, Contract or other arrangement that is a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code), including the Bonus Plan has been operated and administered in compliance with Section 409A of the Code and has been timely amended to comply with Section 409A of the Code. No additional tax under Section 409A(a)(1)(B) of the Code has been or is reasonably expected to be incurred by any "service provider" (within the meaning of Treas. Reg. § 1.409A-1(f)) under any such Plan, Contract, or other arrangement, including the Bonus Plan.

3.20 Environmental Matters. The Company is in compliance with all Environmental Requirements other than where the failure to comply would not reasonably be expected to have a Company Material Adverse Effect. The Company has obtained, has complied with, and is in compliance in all material respects with all permits, licenses and other authorizations that are required pursuant to Environmental Requirements for the occupation of its facilities and business; and a list of all such permits, licenses and other authorizations is set forth in Schedule 3.20. The Company has not received any written notice, report or other information regarding any actual or alleged violation of Environmental Requirements, or any liabilities or potential liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to any of them or the facilities currently or formerly owned, leased or operated by the Company, arising under Environmental Requirements.

3.21 Insurance. Schedule 3.21 sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Company is a party, a named insured, or otherwise the beneficiary of coverage (each, a "**Policy**"): (a) the name of the insurer, the name of the Policy holder and the name of each covered insured; (b) the Policy number and the period of coverage; (c) the description of coverage and deductible amounts; and (d) current premiums and a description of any retroactive premium adjustments or other loss-sharing arrangements. There is no claim by the Company pending under any of such Policies as to which coverage has been denied or disputed by the issuers or underwriters of any of the Policies. None of the insurers of the Company has issued a reservation of rights letter in the defense of claims. All premiums due and payable under the Policies have been paid, and the Company has no liability for any retrospective premium adjustment, audit premium adjustment, experience based liability or loss sharing cost adjustment under any of the Policies. There have been no gaps in the Company's historical insurance coverage. The Company has complied in all material respects with the terms and conditions of the Policies. The Policies are in full force and effect. The Policies have been and are of the type and in amounts adequate to insure fully against the risks to which the Company and its properties and assets are normally exposed in the operation of its businesses. To the Knowledge of the Company, (i) there is no threatened termination of, or premium increase with respect to, any of the Policies, and (ii) the consummation of the transactions contemplated by this Agreement and the other Transaction Documents will not result in any termination of, or premium increase with respect to, any of the Policies or any inability to assess claims incurred prior to Closing under any of the Policies.

3.22 Contracts.

(a) Schedule 3.22 sets forth a complete and correct list of each Contract, to which the Company is a party or by which the Company or its respective assets may be bound and which:

(i) requires the Company to pay, or pursuant to which the Company is likely to receive, consideration of more than $25,000 annually or $50,000 in the aggregate;

(ii) relates to or evidences advances or loans in any amount to any of the Company Parties, or any of the Company's directors, officers or employees, or any Related Person thereof;

(iii) relates to or evidences Indebtedness or a Lien against the property or assets of the Company;

(iv) involves the Company as lessee or lessor of, or pursuant to which the Company holds, or operates, any property, real or personal, including leases of Company Real Property;

(v) relates to or evidences any assumption or guaranty by the Company of any Liability or obligation (including Indebtedness) of any other Person;

(vi) concerns a partnership, limited liability company or joint venture;

(vii) includes provisions regarding non-competition, non-solicitation or non-disparagement on the part of any customer or supplier or any executive officer or director of the Company;

(viii) grants to any Person the authority to execute agreements or otherwise act on behalf of the Company;

(ix) provides for so-called "Most Favored Nation" terms in favor of the Company or any other Person;

(x) limits the ability of the Company to conduct its business, includes non-competition provisions by the Company or provides any exclusive rights to any third party;

(xi) includes an indemnity obligation of the Company;

(xii) grants to any Person any registration rights (including demand and piggyback registration rights) on the Company's Capital Stock;

(xiii) relates to any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance or other plan or arrangement of the Company;

(xiv) grants to any Person the right to use any property or property right of the Company having a value in excess of $25,000 or a preferential right to purchase, other than in the ordinary course of business, consistent with past practice, any of the properties, assets or services of the Company;

(xv) is with a current or former Company Party, or any current or former director, officer or employee of the Company, or any Related Person thereof;

(xvi) is with any of the Customers or Suppliers;

(xvii) is with any Governmental Authority;

(xviii) limits or purports to limit the ability of the Company to use any information or engage in any line of business or with any Person or in any geographic area or during any period of time in any case that would prohibit or restrict the Company from conducting the business of the Company in the manner or in the geographic locations as presently conducted; or

(xix) was not made in the ordinary course of the Company's business and is material to the Company.

(b) The Company has heretofore delivered to Buyer a complete and correct copy of each Contract listed or require to be listed in Schedule 3.22 (each such Contract, a "**Material Contract**"), including any amendment, modification or supplement thereto. Each Material Contract is valid and binding on the Company and, to the Knowledge of the Company, the other parties thereto, and is in full

force and effect, enforceable against the Company in accordance with its terms; and upon consummation of the transactions contemplated by this Agreement will continue in full force and effect, enforceable against the Company in accordance with its terms, without termination, penalty, any change in terms or other adverse consequence.

(c) The Company is not in breach of or default under any Material Contract to which it is a party. To the Knowledge of the Company, no other party to any Material Contract is in breach thereof or default thereunder or has repudiated such contract and no event has occurred which, with notice or lapse of time, would constitute a breach or default thereunder or permit the termination or acceleration thereof. The Company has not received any written or oral notice that any Contract will not be renewed or will be terminated or may be materially modified by the other party thereto.

3.23 Certain Business Practices; Certain Business Restrictions.

(a) Neither the Company, nor to the Knowledge of the Company, any director, officer, agent or employee of the Company (in such Person's capacity as such), nor any other Person acting for or on behalf of the Company, has directly or indirectly: (i) made any unlawful contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services to obtain favorable treatment in securing business, to pay for favorable treatment for business secured or to obtain special concessions, or for special concessions already obtained, for or in respect of the Company or (ii) established or maintained any fund or asset that has not been recorded in the books and records of the Company.

(b) Neither the Company, nor to the Knowledge of the Company, any director, officer, or employee of the Company (i) has ever been indicted for or convicted of any felony or any crime involving fraud or misrepresentation, (ii) is subject to any Order barring, suspending or otherwise limiting the right of the Company or such Person to engage in any activity conducted by the Company, or (iii) has ever been denied any permit or license affecting the Company's or such Person's ability to conduct the business of the Company.

3.24 Customers and Suppliers. Schedule 3.24 identifies (a) the names, city and state of the top 20 customers of the Company by revenue for (i) the year ended December 31, 2013 and (ii) the ten (10) months ended October 31, 2014 (the "**Customers**"), and the amount for which each Customer was invoiced during each such period, and (b) the names, city and state of each supplier from which the Company purchased more than $25,000 of goods and/or services in the fiscal year ended December 31, 2013 or expects to purchase more than such amount for the year ending December 31, 2014 (the "**Suppliers**"). Except as described in Schedule 3.24, since the date of the Company Last Balance Sheet the Company has not received any written notice (i) that any Supplier has ceased, or, in the reasonably foreseeable future, will cease, to provide services to the Company or has substantially reduced, or, in the reasonably foreseeable future, will substantially reduce, the use or provision, as the case may be, of such services at any time (including as a result of the consummation of the transactions contemplated hereby), or (ii) that any Customer or Supplier intends to implement any reduction or increase in prices or other modification to terms between the Company and such Customer or Supplier.

3.25 Related-Party Transactions.

(a) No Company Party, employee, officer or director of the Company or any Related Person of any of them is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them.

(b) Schedule 3.25 sets forth a list of all outstanding obligations or Contracts (i) between the Company and any Company Party or any of the Company's Affiliates and (ii) between the Company and any of the Company's officers, directors, Stockholders, employees or any of their Related Persons, other than in connection with such Person's employment. None of the Company's officers or directors has or has had, directly or indirectly, (i) any interest or involvement in any entity which purchases from or sells or furnishes to, the Company, any goods or services; provided, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed an interest in any entity for purposes of this Section 3.25; (ii) any interest in any Contract with the Company; or (iii) any interest in any property or assets used in, or necessary to, the Company's business.

3.26 Finders Fees. No broker, investment banker, financial advisor or other Person is entitled to receive from the Company, the Stockholders or any of their Affiliates, any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement.

3.27 Annualized Recurring Revenue. The Company's annualized recurring revenue as of the Closing Date from the Customers set forth on Schedule 3.27 (the "**Company Customers**") is greater than or equal to $1,500,000.

3.28 IBM License Agreement. After the Closing Date, IBM is required to pay two additional payments each in the amount of $312,500 to the Company pursuant to that certain Software and Source Code License Agreement dated April 15, 2010 by and between the Company and IBM, as amended.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES CONCERNING BUYER AND MERGER SUBS

Except as set forth in the Buyer Disclosure Schedule delivered by the Buyer to the Company, which shall be arranged by section and subsection of this ARTICLE IV and shall qualify only the respective section or subsection referenced therein, Buyer represents and warrants to the Company as follows as of the date hereof and as of the First Merger Effective Time, as though made at the First Merger Effective Time:

4.1 Organization and Authority; Due Authorization and Execution.

(a) Each of Buyer and Merger Sub (Corp) is a corporation duly incorporated, validly existing and in good standing under, and by virtue of, the Laws of the State of Delaware. Merger Sub (LLC) is a limited liability company duly organized, validly existing and in good standing under, and by virtue of, the Laws of the State of Delaware. Each of Buyer, Merger Sub (Corp) and Merger Sub (LLC) has the requisite corporate or limited liability company power, as applicable, and all lawful authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. The Buyer is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to do so could reasonably expected to be a Buyer Material Adverse Effect.

(b) Buyer and the Merger Subs each has all requisite corporate or limited liability company power and authority, as applicable, to execute and deliver this Agreement and the Transaction Documents to which it is a party, to consummate the transactions contemplated hereby and thereby and to perform its respective obligations hereunder and thereunder. The execution and delivery by each of Buyer and the Merger Subs of this Agreement and the Transaction Documents to which it is a party, the performance by Buyer and the Merger Subs of their respective obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby, including Merger Subs' filing of

the Certificates of Merger, shall have been duly and validly authorized by all necessary corporate or limited liability company action, as applicable, in respect thereof on the part of Buyer and the Merger Subs, as applicable, as of the date of such occurrence. No corporate proceedings on the part of Buyer or the Merger Subs are necessary to authorize the execution and delivery by Buyer or the Merger Subs as applicable, of this Agreement and the Transaction Documents to which it is a party or the performance by Buyer or the Merger Subs of their respective obligations hereunder or thereunder. This Agreement is, and each of the Transaction Documents to which it is a party has been, or at the Closing will be, duly and validly executed and delivered by Buyer and the Merger Subs, as applicable.

(c) This Agreement constitutes, and each of the Transaction Documents to which it is a party when executed will constitute, the valid and binding obligation of each of Buyer, Merger Sub (Corp) and Merger Sub (LLC), enforceable against Buyer, Merger Sub (Corp) and Merger Sub (LLC), as applicable, in accordance with its respective terms, except to the extent that such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Laws affecting creditors' rights and remedies generally or by general equitable principles (whether applied by a court of law or equity).

4.2 Valid Issuance of Securities. The shares of Buyer Stock issuable in connection with the Mergers will have, at the Closing, been duly authorized and reserved for issuance pursuant to the terms of this Agreement and when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid and non-assessable, and will be free and clear of all pledges, liens, encumbrances and restrictions other than restrictions on transfer under the Transaction Agreements and under applicable state and federal securities Laws. Assuming the accuracy of the representations of the Company Parties in each Company Party's investor suitability questionnaire and subject to the filings described in Section 4.3, the Buyer Stock will be issued in compliance with all applicable federal and state securities Laws.

4.3 Consents, Approvals, Etc. Assuming the accuracy of the representations of each of the Company Parties in such Company Party's investor suitability questionnaire, no consent, approval or authorization of, filing or registration with, or notice to, any Governmental Authority or other third Person is required to be made or obtained in connection with the execution and delivery by Buyer or the Merger Subs of this Agreement or any of the Transaction Documents to which it is a party, the performance by Buyer or the Merger Subs of their respective obligations hereunder or thereunder or the consummation by Buyer or the Merger Subs of the transactions contemplated hereby or thereby, except for filings pursuant to Regulation D of the Securities Act, and applicable state securities Laws, which have been made or will be made in a timely manner.

4.4 No Conflicts. None of the execution and delivery of this Agreement or any of the Transaction Documents to which Buyer or any Merger Sub is a party, the consummation of the transactions contemplated hereby and thereby, or the performance by Buyer or the Merger Subs of their obligations hereunder or thereunder will, with or without the giving of notice or the lapse of time, or both: (a) violate or conflict with any of the provisions of the certificate of incorporation, bylaws, certificate of formation or operating agreement, as applicable of Buyer or the Merger Subs; (b) violate, conflict with, result in a breach or default under, or cause the termination or acceleration of any mortgage, indenture, Contract, license, permit, instrument, trust document or other agreement or document to which Buyer or any Merger Sub is a party or by which Buyer, any Merger Sub or any of their respective assets or properties may be bound; (c) violate any provision of any Law to which Buyer or any Merger Sub is subject; (d) violate any Order applicable to Buyer or the Merger Subs; (e) result in the revocation or suspension of any Buyer Permit; or (f) result in the creation or imposition of any Lien upon any properties or assets of Buyer or any Merger Sub, other than with respect to any of (b) through (f) which, individually or in the aggregate, could not reasonably be expected to have a Buyer Material Adverse Effect.

4.5 Capitalization.

(a) Immediately prior to the Effective Date, the authorized capital of Buyer shall consist of 400,000 shares of Class A Common Stock, par value $0.01 per share, 289,332 shares of which are issued and outstanding immediately prior to the Closing, and 100,000 shares of Class B Common Stock, none of which are issued and outstanding immediately prior to the Closing.

(b) Buyer has reserved 64,899 shares of Buyer Common Stock for issuance upon the exercise of outstanding options pursuant to the Alert Logic, Inc. 2013 Stock Option Plan (as amended from time to time, the "**Buyer Stock Plan**"). Except for options issued or to be issued under the Buyer Stock Plan, warrants to purchase up to 2,690 shares of Buyer's Class A Common Stock, and options to purchase 13,429 shares of Buyer's Class A Common Stock outstanding pursuant to the Alert Logic, Inc. 2005 Stock Option Plan, there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first offer or similar rights) or agreements, orally or in writing, to purchase or acquire from Buyer any shares of Buyer Common Stock or any other debt or equity of Buyer.

4.6 Merger Subs. Each Merger Sub is a wholly-owned subsidiary of Buyer, was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and the Transaction Documents, has engaged in no other business activities and has conducted its operations only as contemplated in this Agreement and the Transaction Documents. Buyer owns beneficially and of record all outstanding capital stock or limited liability company interests, as applicable, of each Merger Sub free and clear of any Liens and no other Person holds any capital stock or other equity interests of any Merger Sub nor has any rights to acquire any interest in any Merger Sub.

4.7 Financial Statements.

(a) (i) Buyer has delivered to the Company correct and complete copies of its audited balance sheet and related statements of income, retained earnings and cash flows for each of its fiscal years ended December 31, 2012 and 2013 (collectively the "**Buyer Historical Financial Statements**"); and (ii) Buyer has delivered to the Company its unaudited balance sheet and related statements of income, retained earnings and cash flows for the ten (10) month period ended October 31, 2014 (the "**Buyer Interim Financial Statements**" and together with the Buyer Historical Financial Statements, the "**Buyer Financial Statements**"). Buyer's unaudited balance sheet as of October 31, 2014 included in the Buyer Financial Statements contains an accurate accounting, as of the date thereof, of Buyer's assets and liabilities, each as calculated in accordance with GAAP and in a manner consistent with historical past practice.

(b) The Buyer Financial Statements (i) were prepared from the books and records of Buyer; (ii) present fairly in all material respects the financial condition and results of operations and cash flows of Buyer, as of the date or dates and for the period or periods therein specified and (iii) have been prepared in accordance with GAAP applied on a consistent basis, except that Buyer Interim Financial Statements include all required accruals under GAAP but may not contain notes and are subject to normal recurring year-end adjustments which, in the aggregate, will not be material.

4.8 Litigation. There is no claim, action, suit, proceeding, inquiry or investigation pending or, to the Knowledge of Buyer, threatened, in each case against or affecting Buyer or its assets or properties (whether or not covered by insurance) that would have a Buyer Material Adverse Effect. There is no Order outstanding against Buyer or by which its properties or assets are bound or affected.

ARTICLE V
COVENANTS OF THE PARTIES

5.1 Affirmative Conduct of the Business of the Company. From the date hereof through and until the earlier of the termination of this Agreement and the Closing (the "**Pre-Closing Period**"):

(a) Except for the consummation of the transactions contemplated hereby or by any Transaction Document, the Company shall conduct the business of the Company in the ordinary course consistent with past practices, maintain the Company's books, records and accounts in accordance with GAAP, consistent with past practices, pay the debts and Taxes of the Company when due, pay or perform other obligations when due, and use commercially reasonable efforts consistent with past practices and policies to preserve intact the present business organization of the Company, keep available the services of the present officers and employees of the Company and preserve the relationship of the Company with customers, suppliers, distributors, licensors, licensees, and others having business dealings with the Company.

(b) The Company shall promptly notify Buyer of (i) any event, occurrence or emergency not in the ordinary course of the business of the Company, (ii) any event involving and materially adversely affecting the Company, or (iii) any event or action that has materially decreased or could reasonably be expected to materially decrease the value of the Company that arises during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing.

5.2 Restrictions on Conduct of the Business of the Company. Except (i) for the consummation of the transactions contemplated hereby or by any document ancillary hereto, or (ii) as set forth in Schedule 5.2 or otherwise expressly contemplated hereby or by any document ancillary hereto, during the Pre-Closing Period, the Company shall not, without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed):

(a) amend its articles of incorporation or bylaws;

(b) undertake any expenditure, transaction or commitment exceeding $50,000 individually or $100,000 in the aggregate or any commitment or transaction that would require disclosure under Section 3.22(a) hereof if in existence as of the date hereof;

(c) pay, discharge, waive or satisfy, in any amount in excess of $50,000 individually or $100,000 in the aggregate, any liability, right or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) except in the Ordinary Course of Business;

(d) adopt or change accounting methods or practices (including any change in depreciation or amortization policies or rates, or revenue recognition policies) other than as required by GAAP;

(e) make, change or revoke any Tax election, adopt or change any Tax accounting method, enter into any closing agreement in respect of Taxes, settle or compromise any Tax claim or assessment, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment or file or amend any Tax Return unless a copy of such Tax Return has been delivered to Buyer for review and approval;

(f) revoke the Company's election to be taxed as an S Corporation or take or allow any action (other than the Mergers) that would result in the termination of the Company's status as an S Corporation;

(g) take or fail to take any action required hereby that could reasonably be expected to prevent or impede the Mergers from qualifying as a reorganization within the meaning of Section 368(a) of the Code;

(h) revalue any of its assets (whether tangible or intangible), including writing down the value of inventory or writing off notes or Accounts Receivable except in the Ordinary Course of Business;

(i) declare, set aside, or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Stock except for tax distributions, or split, combine or reclassify any Company Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for, shares of Company Stock, or directly or indirectly repurchase, redeem or otherwise acquire any shares of Company Stock (or options, warrants or other rights convertible into, exercisable or exchangeable for, Company Common Stock) except in accordance with the agreements evidencing Company Options;

(j) adopt, amend or terminate any Plan other than any amendments required to comply with changes in applicable Law;

(k) enter into, terminate or materially amend any Contract, other than customer Contracts in the ordinary course of business;

(l) pay or promise to pay any special bonus or special remuneration (whether payable in cash, equity or otherwise) to any employee in excess of $2,500 to any individual or $30,000 in the aggregate;

(m) increase, decrease or otherwise change the salary, wage rates, bonuses, fringe benefits or other compensation (including equity-based compensation) payable or to become payable by the Company to any of its employees except in the Ordinary Course of Business;

(n) make any declaration, promise, commitment or obligation of any kind for the payment of, or acceleration by, the Company of severance, termination, change of control, or bonus pay (whether in cash or equity or otherwise), except payments made pursuant to written agreements existing on the date hereof and disclosed in Schedule 3.12;

(o) other than entering into agreements with end users in the ordinary course of business pursuant to the Company's standard form agreement(s), (i) sell, lease, license or otherwise dispose of or grant any security interest in any of its properties or assets, including the sale of any Accounts Receivable, except for the sale of properties or assets (whether tangible or intangible) which are not Intellectual Property and only in the ordinary course of business and consistent with past practices, or transfer to any Person any rights to any Company Intellectual Property or enter into any agreement or modify or amend any existing agreement with respect to any Company Intellectual Property with any Person or with respect to any Intellectual Property of any Person, (ii) purchase or license any Intellectual Property or enter into any agreement or modify or amend any existing agreement with respect to the Intellectual Property of any Person or (iii) enter into any agreement or modify or amend any existing agreement with respect to the development of any Intellectual Property with a third party;

(p) except for reasonable advances to employees for travel and business expenses not exceeding $10,000 in the aggregate that are incurred in the ordinary course of business consistent with past practices, make any loan to any Person, or forgive any loan to any Person, or purchase debt securities of any Person or amend the terms of any outstanding loan agreement;

(q) incur any indebtedness (other than the obligation to reimburse employees for travel and business expenses or indebtedness incurred in connection with the purchase of goods and services in the ordinary course of business consistent with past practices), amend the terms of any outstanding loan agreement, guarantee any indebtedness of any Person, issue or sell any debt securities or guarantee any debt securities of any Person;

(r) commence or settle any lawsuit, threat of any lawsuit or proceeding or other investigation by or against the Company or relating to any of its business, properties or assets;

(s) issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any Company Stock or any securities convertible into, exercisable or exchangeable for, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating the Company to issue or purchase any such shares or other convertible securities, except for the issuance of Company Stock pursuant to the exercise of outstanding Company Options and Company Warrants or conversion of indebtedness;

(t) enter into any agreement to purchase or sell any interest in real property, grant any security interest in any real property, enter into any lease, sublease, license or other occupancy agreement with respect to any real property or materially alter, amend, modify or terminate any lease;

(u) acquire or agree to acquire by merging or consolidating with, or by purchasing any material assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any material assets or any equity securities;

(v) terminate any employee, or encourage or otherwise cause any such employee to resign from the Company;

(w) cancel, amend or renew any Policy; or

(x) take, commit, or agree in writing or otherwise to take, any of the actions described in Sections 5.2(a) through 5.2(w) hereof.

5.3 No Solicitation. During the Pre-Closing Period:

(a) The Company shall not (nor shall the Company authorize or cause, any of its directors, officers or other employees, stockholders, agents, representatives or Affiliates to), directly or indirectly, take any of the following actions with any party other than Buyer and its designees: (i) solicit, encourage, seek, support, assist, initiate or participate in any inquiry, negotiations or discussions, or enter into any agreement, with respect to any offer or proposal to acquire all or any material part of the business, assets or properties of the Company, or any amount of the Company Stock (whether or not outstanding), whether by merger, consolidation, purchase of assets, tender offer, license or otherwise, or effect any such transaction (each an "**Acquisition Proposal**"), (ii) disclose or furnish any information other than in the ordinary course of business concerning the Company, or other than in the ordinary course of business afford to any Person access thereto, (iii) assist or cooperate with any Person to make any proposal to purchase all or any part of the Company Stock or assets of the Company (other than the

sale of the products of the Company in the ordinary course of business consistent with past practice), or (iv) enter into any agreement with any Person providing for the acquisition of the Company, whether by merger, purchase of assets, license, tender offer or otherwise.

(b) The Company shall immediately cease and cause to be terminated any such negotiations, discussion or agreements (other than with Buyer) that are the subject matter of Section 5.3(a) hereof.

(c) In the event that the Company, any Stockholder, or any of their respective Affiliates shall receive any offer, proposal, or request, directly or indirectly, of the type referenced in clause (i), (iii), or (iv) of Section 5.3(a) hereof, or any request for disclosure or access as referenced in clause (ii) of Section 5.3(a) hereof, the Company shall (i) immediately suspend any discussions with such offeror or party with regard to such offers, proposals, or requests and (ii) promptly (and in no event more than 24 hours) thereafter, notify Buyer thereof, which notice shall contain (A) the pricing, terms, conditions and other material provisions of such proposed transaction, (B) the identity of the proposed party or parties to such transaction and (C) such other information related thereto as Buyer may reasonably request, provided that in all instances the Company shall not be required to make any disclosures to Buyer that would cause the Company to breach any pre-existing confidentiality obligations to third parties.

(d) The parties hereto agree that irreparable damage would occur in the event that the provisions of this Section 5.3 were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Buyer shall be entitled to seek an immediate injunction or injunctions, to prevent breaches of the provisions of this Section 5.3 and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Buyer may be entitled at law or in equity. Without limiting the foregoing, it is understood that any violation of the restrictions set forth above by any officer, director, or Affiliate of the Company shall be deemed to be a breach of this Agreement by the Company.

5.4 Required Stockholder Approval.

(a) The Company shall obtain and deliver the Required Stockholder Approval within twenty four (24) hours following the execution of this Agreement. Promptly upon obtaining the Required Stockholder Approval, the Company shall prepare and, as soon as reasonably practicable, send to all Stockholders on the record date for the Stockholder Written Consents who did not execute a Stockholder Written Consent the notices required pursuant to the TBOC. Such materials submitted to the Stockholders in connection with such Stockholder Written Consents shall be subject to review and comment by Buyer and shall include an information statement regarding the Company, the terms of this Agreement and the Mergers, the treatment of the Company Stock, Company Options and all other outstanding securities of the Company under the terms of this Agreement (the "**Stockholder Information Statement**"). Each party agrees that information supplied by such party for inclusion in the Stockholder Information Statement will not, on the date the Stockholder Information Statement is first sent or furnished to the Stockholders contain any statement which, at such time, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they are made, not false or misleading. The parties shall update, amend and supplement the Stockholder Information Statement from time to time as may be required by applicable Law.

(b) The board of directors of the Company shall unanimously recommend that the Company's stockholders consent in favor of adoption of this Agreement, the Mergers and the transactions

contemplated hereby and shall not alter, modify, change or revoke, in a manner adverse to Buyer, its unanimous approval of this Agreement, the Mergers and the transactions contemplated hereby, including each of the matters set forth in Section 5.4 hereof (the "**Recommendation**"). For purposes of this Agreement, the Recommendation shall be deemed to have been modified in a manner adverse to Buyer if such recommendation shall no longer be unanimous.

5.5 Access to Information. During the Pre-Closing Period, the Company shall afford Buyer and its accountants, counsel and other representatives, reasonable access during normal business hours and to the extent not interfering with the business operations of the Company, to (a) all of the properties, books, Contracts and records of the Company, and (b) all other information concerning the business, properties and personnel (subject to restrictions imposed by applicable Law) of the Company as Buyer may reasonably request. Neither Buyer nor any of its accountants, counsel or other representatives shall contact any employee, customer, supplier or landlord of the Company without the prior written consent of the Company. The Company shall provide to Buyer and its accountants, counsel and other representatives copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request; provided, however, that no information discovered through the access afforded by this Section 5.5 shall (x) limit or otherwise affect any remedies available to the party receiving such notice, or (y) be deemed to amend or supplement the Company Disclosure Schedule or prevent or cure any misrepresentations, breach of warranty or breach of covenant. Within fifteen (15) days of the end of each month during the Pre-Closing Period, the Company shall provide Buyer with an unaudited balance sheet as of the end of such month, along with a statement of income and cash flows for such month and the year-to-date.

5.6 Notification of Certain Matters. Except as prohibited by applicable Law, each party shall give prompt notice to the other Parties of: (a) the occurrence or non-occurrence of any event which causes any representation or warranty of the Company contained in this Agreement to be materially untrue or inaccurate at or prior to the First Merger Effective Time, and (b) any failure of such Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.6 shall not (x) limit or otherwise affect any remedies available to the Party receiving such notice, or (y) be deemed to amend or supplement any Buyer Disclosure Schedule or Company Disclosure Schedule, as applicable, or prevent or cure any misrepresentations, breach of warranty) or breach of covenant.

5.7 Confidentiality/Public Disclosure. The Parties acknowledge that Buyer and the Company have previously executed a Mutual Nondisclosure Agreement dated August 4, 2014 (the "**Nondisclosure Agreement**"), which Nondisclosure Agreement is hereby incorporated by reference and shall continue in full force and effect in accordance with its terms. Notwithstanding anything to the contrary in the Nondisclosure Agreement, no Party shall issue any press release or public announcement relating to the subject matter of this Agreement without the prior written approval of the other Parties.

5.8 Consents. The Company shall (i) use commercially reasonable efforts to obtain all necessary consents, waivers and approvals of any parties to any Material Contract as are required thereunder in connection with the Mergers or for any such Material Contracts to remain in full force and effect, provided that such efforts shall not obligate the Company to pay any amounts to obtain such consents, and (ii) provide all notices required under any Material Contract in connection with the Mergers. Such consents, waivers, notices and approvals shall be in a form reasonably acceptable to Buyer.

5.9 Resignations. The Company shall, prior to the Closing, cause each officer and director of the Company to execute a resignation letter, effective as of the First Merger Effective Time.

5.10 Termination of Certain Benefit Plans. Effective as of no later than the day immediately preceding the Closing Date, the Company and any ERISA Affiliate shall terminate any and all group severance, separation or salary continuation plans, programs or arrangements and any and all Plans intended to include a Code Section 401(k) arrangement (each, a "**401(k) Plan**") (unless Buyer provides written notice to the Company that such 401(k) Plans shall not be terminated). Unless Buyer provides such written notice to the Company, no later than five Business Days prior to the Closing Date, the Company shall provide Buyer with evidence that such Plans have been terminated (effective as of no later than the day immediately preceding the Closing Date) pursuant to resolutions of the board of directors of the Company or such ERISA Affiliate, as the case may be. The form and substance of such resolutions shall be subject to review and approval of Buyer. The Company also shall take such other actions in furtherance of terminating such Plans as Buyer may reasonably require. In the event that termination of a 401(k) Plan would reasonably be anticipated to trigger liquidation charges, surrender charges or other fees, then such charges and/or fees shall be the responsibility of the Company, and the Company shall take such actions as are necessary to reasonably estimate the amount of such charges and/or fees and provide such estimate in writing to Buyer no later than seven (7) Business Days prior to the Closing Date.

5.11 Tax Matters.

(a) Post-Closing Tax Return Filings.

(i) Buyer shall prepare and timely file (or cause to be prepared and timely filed) with the appropriate Taxing Authority all Tax Returns required to be filed by the Company with respect to any taxable period beginning before the Closing Date that become due after the Closing Date except for the Final S corporation Returns (each such Tax Return to be prepared by Buyer, a "**Buyer Prepared Return**"). Each Buyer Prepared Return shall be prepared in a manner consistent with the prior practice of the Company unless otherwise required by applicable Laws. Representative shall prepare the U.S. federal income tax return (and state and local income tax returns to the extent such state and local tax Laws have provisions similar to Code Sections 1362(d)(2)(B) and 1362(e)(1)(A) and Treasury Regulation § 1.1502-76(b)((1)(ii)(A)(2)) of the Company for the taxable period ending the day before the Closing Date ("**Final S corporation Returns**") in a manner consistent with the prior practice of the Company unless otherwise required by applicable Laws. Representative shall provide Buyer with a copy of each Final S corporation Return for review and comment at least thirty (30) days prior to the filing of such Final S corporation Return, and Buyer shall have the right to approve (which approval shall not be unreasonably withheld, conditioned or delayed) each Final S corporation Return.

(ii) Buyer shall provide the Representative with a copy of each Buyer Prepared Return for review and comment at least thirty (30) days prior to the filing of such Tax Return (or, if required to be filed within thirty (30) days after the Closing or the end of the taxable period to which such return relates, as soon as reasonably possible following the Closing Date or the end of such taxable period, as the case may be), accompanied, if relevant, by a statement (an "**Indemnified Tax Statement**") setting forth and calculating in reasonable detail the Taxes that are shown as due on such Tax Return and claimed to be indemnifiable pursuant to Section 8.2. In the case of any Buyer Prepared Return as to which the filing position reflected thereon would result in a claim for indemnification under Section 8.2, the Representative shall have the right to review and approve (which approval shall not be unreasonably withheld, conditioned or delayed) each Buyer Prepared Return.

(iii) If the Representative disagrees with the manner of presentation of a Buyer Prepared Return or the amount of indemnified Taxes calculated in any Indemnified Tax Statement, within fifteen (15) days of the receipt of a Buyer Prepared Return or any Indemnified Tax Statement, the Representative shall provide to Buyer a notice of such dispute (a "**Tax Statement Dispute**"). If the Representative does not provide a notice of Tax Statement Dispute within such 15-day period, the

Representative shall be deemed to have accepted the Tax Return. If the Representative provides Buyer with a notice of a Tax Statement Dispute, the Representative shall also provide Buyer with a written explanation of the reasons for its disagreement. Buyer and the Representative shall attempt to resolve their disagreement with respect to any Buyer Prepared Return and any Indemnified Tax Statement in good faith. If the Representative and Buyer cannot reach complete agreement within fifteen (15) days after the Buyer's receipt of a Tax Statement Dispute, the dispute shall be submitted to an arbitrator reasonably acceptable to both the Representative and Buyer (the "**Tax Arbitrator**") pursuant to the procedures described with respect to the Accounting Referee in Section 2.6(b)(ii), for resolution. The decision of the Tax Arbitrator with respect to such dispute shall be binding upon the Representative, the Company Parties and the Buyer. Buyer shall, subject to any indemnification pursuant to Section 8.2, timely file or cause to be filed any Buyer Prepared Return as finally determined under this Section 5.11(a), and shall pay or cause to be paid the Tax shown as due on each such Tax Return.

(b) Taxable Year Closing; Allocation of Taxes. Buyer shall, unless prohibited by applicable Law, cause the taxable periods of the Company to end as of the close of the Closing Date, except that the taxable period of the Company for federal income tax purposes (and state and local income tax purposes to the extent such state and local tax Laws have provisions similar to Code Sections 1362(d)(2)(B) and 1362(e)(1)(A) and Treasury Regulation § 1.1502-76(b)((1)(ii)(A)(2)) shall end at the end of the day prior to the Closing Date. For purposes of this Agreement, Taxes incurred by the Company with respect to a taxable period that includes but does not end on the Closing Date, shall be allocated to the portion of the taxable period ending on the Closing Date: (i) except as provided in (ii) and (iii) below, to the extent feasible, on a specific identification basis, according to the date of the event or transaction giving rise to the Tax, and (ii) except as provided in (iii) below, with respect to periodically assessed ad valorem Taxes and Taxes not otherwise reasonably allocable to specific transactions or events, in proportion to the number of days in such period occurring through the Closing Date compared to the total number of days in such taxable period, and (iii) in the case of any Tax based upon or related to income or receipts, in an amount equal to the Tax which would be payable if the relevant taxable period ended on the Closing Date. Any credits relating to a taxable period that begins before and ends after the Closing Date shall be taken into account as though the relevant taxable period ended on the Closing Date. All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with prior practices of the Company, unless otherwise required by applicable Law. For the avoidance of doubt, for federal, state and local income tax purposes, the deduction(s) for payments made with respect to the Vested Company Options pursuant to Section 2.2 shall be allocated to the taxable period of the Company beginning on the Closing Date.

(c) Amended Returns. Unless required by applicable Law, the Buyer shall not amend or cause the amendment of a Tax Return of the Company, or file or amend any Tax election, concerning the Company, in each case, with respect to any Pre-Closing Tax Period without the written consent of the Representative, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that, notwithstanding anything herein to the contrary, (i) nothing shall preclude any of the Buyer Indemnified Parties from filing any Tax Return or amended Tax Return (including any voluntary disclosure agreement or similar agreement), applying for or participating in any voluntary disclosure program or obtaining any exemption certificates, in each case, relating to any Sales Tax ("**Sales Tax Actions**"), and (ii) the rights of the Buyer Indemnified Parties to be indemnified under Section 8.2 shall in no event be adversely affected by any of the Sales Tax Actions taken by them. In the event that Buyer proposes to take any action described in this Section 5.11(c) (including any action based on a determination that such action is not subject to prior consent of the Representative by reason of being required by applicable Law) that would reasonably be expected to cause or increase a liability for Taxes for which the Company Parties would have indemnification obligation under Section 8.2, Buyer shall, not less than fifteen (15) days before taking such action, provide to the Representative a copy of any proposed Tax Return or other filing, and an Indemnified Tax Statement setting forth the action proposed to be

taken, and calculating in reasonable detail the amount of Taxes that would be payable by the Company as a result of such action and the amount of such Taxes claimed by Buyer to be indemnifiable pursuant to Section 8.2. Any dispute regarding any such Indemnified Tax Statement (other than any such Indemnified Tax Statement relating to any Sales Tax Actions) shall be resolved in the same manner as described in Section 5.11(a)(iii). To the extent of any conflict between this Section 5.11(c), on one hand, and Section 5.11(d) governing Tax audits, on the other hand, Section 5.11(d) shall prevail. Buyer shall consider in good faith any reasonable comments made by the Company Parties with respect to any such Indemnified Tax Statement relating to any Sales Tax Actions; provided that the Buyer shall have the right, in its sole discretion, to pursue any such Sales Tax Actions after fifteen (15) days of providing any such Indemnified Tax Statement.

(d) Audits and Contests Regarding Taxes. If Buyer or any of its Affiliates receives any notice of a pending or threatened Tax audit, assessment, or adjustment against or with respect to the Company which may give rise to a right to indemnification pursuant to the terms of ARTICLE VIII, Buyer shall promptly notify the Representative within five (5) Business Days of the receipt of such notice. Buyer and the Representative each agree to consult with and to keep the other informed on a regular basis regarding the status of any Tax audit or proceeding to the extent that such audit or proceeding could affect a liability of the Company Parties (including indemnity obligations hereunder). The Buyer shall have the right to represent the Company's interests in any Tax audit or administrative or judicial proceeding pertaining to taxable periods beginning before the Closing Date and shall control the disposition of any issue involved in such proceeding; provided that the Representative shall have the right to participate in such proceeding, at its own expense. In the event that Buyer proposes to settle or compromise any Tax liability as to which the Company Parties would have indemnification obligation under Section 8.2, Buyer shall, not less than fifteen (15) days before such settlement, provide to the Representative an Indemnified Tax Statement setting forth and calculating in reasonable detail the amount of Taxes that would be payable by the Company as a result of such settlement or compromise and the amount of such Taxes claimed by Buyer to be indemnifiable pursuant to Section 8.2. No such audit or proceeding may be settled or compromised by the Buyer without the consent of the Representative, which consent shall not be unreasonably withheld, conditioned or delayed, if the Company Parties would have an indemnification obligation pursuant to Section 8.2 as a result of such settlement or compromise or such settlement or compromise would reduce an overpayment of Taxes described in Section 5.11(d). Any dispute regarding any Indemnified Tax Statement with respect to such proposed settlement or compromise shall be resolved in the same manner as described in Section 5.11(a)(iii). To the extent that control or settlement rights with respect to a Tax audit or proceeding pursuant to this Section 5.11(d) may overlap with a control or settlement right under ARTICLE VIII, the provisions of this Section 5.11(d) shall govern such Tax audit or proceeding control or settlement right.

(i) Notwithstanding anything herein to the contrary, with respect to any Sales Tax relating to any of the Major States, the Buyer Indemnified Parties shall have the right, in its sole discretion, to file any Tax Return or amended Tax Return (including any voluntary disclosure agreement or similar agreement), apply for or participate in any voluntary disclosure program, or remit any Sales Tax, upon (A) the completion of the process of collecting Sales Tax Compliance Documentation under Section 5.11(d)(iii) with respect to all the Major States or (B) the three (3) month anniversary of the Closing Date, whichever occurs earlier. If the Representative disputes the amount of any Sales Tax that the Buyer requests to remit to any of the Major States, the Representative and the Buyer shall resolve such dispute in the same manner as described in Section 5.11(a)(iii). The amount of Sales Tax payable in any of the Major States shall be paid first out of the Tax Escrow Fund and, if there is no amount remaining in the Tax Escrow Fund, from the General Escrow Fund.

(ii) Notwithstanding anything herein to the contrary, with respect to any Sales Tax relating to any of the Minor States, the Buyer Indemnified Parties shall have the right to file

any Tax Return or amended Tax Return and remit any applicable Sales Tax related thereto if required by the applicable Taxing Authority of any of the Minor States after giving a written notice thereof to the Representative. The Buyer Indemnified Parties shall not voluntarily file any voluntary disclosure agreement or similar agreement or voluntarily apply for or participate in any voluntary disclosure program in any of the Minor States, without a prior written consent of the Representative. If the Representative disputes the Buyer Indemnified Parties' position that the applicable Taxing Authority of a Minor State requires the filing of a Tax Return or an amended Tax Return or remittance of any Sales Tax for a Pre-Closing Tax Period, the Representative and the Buyer shall resolve such dispute in the same manner as described in Section 5.11(a)(iii). The amount of Sales Tax payable in any of the Minor States shall be paid first out of the General Escrow Fund and, if there is no amount remaining in the General Escrow Fund, from the Tax Escrow Fund.

(iii) The Buyer and the Representative shall use reasonable efforts to cooperate with each other to obtain from customers sales tax certificates, proof of use tax payment, or other documentation substantiating that sales to such customers in any of the Pre-Closing Tax Periods on which the Company did not collect Sales Tax were exempt from or otherwise not subject to Sales Tax (each, "**Sales Tax Compliance Documentation**").

(iv) With respect to any Sales Tax required to be remitted by the Buyer as a result of voluntarily filing any Tax Return or amended Tax Return (including any voluntary disclosure agreement or similar agreement) or voluntarily applying for or participating in any voluntary disclosure program, the Buyer agrees to use commercially reasonable efforts to cooperate with the Representative to request reimbursement or payment from the applicable customers to whom such Sales Tax relates.

(v) Funds from the Tax Escrow Fund shall be released to the Buyer to pay any Sales Tax or to reimburse the Buyer for the payment of any Sales Tax upon receipt of the confirmation of payment in accordance with this Section 5.11 but subject to Section 5.11(a)(iii). Any remaining Tax Escrow Fund shall be released to the Company Stockholders (A) in the amount of $262,006 if and when the Buyer receives from IBM Sales Tax Compliance Documentation that is reasonably satisfactory to the Buyer on or before March 31, 2015, (B) in the amount of any reimbursement or payment received by the Company from the applicable customers for any Sales Tax for any Pre-Closing Tax Period, (C) following Buyer's receipt of one or more Sales Tax Compliance Certificates of at least $25,000 in the aggregate and Buyer's determination, in its reasonable discretion, that such amount is no longer payable by or imposed on the Company as a result of receipt of the Sales Tax Compliance Certificates, other than the Sales Tax Compliance Certificate described in clause (A), but no more than once per quarter with the first such release occurring on March 31, 2015 and (D) on the eighteen (18) month anniversary of the Closing Date, other than the amounts reserved for any Sales Tax for which the Buyer has submitted a written claim and remains unresolved or unpaid, which shall be paid upon resolution or payment of such Sales Tax.

(vi) For purposes of this Agreement, the "Major States" mean Texas, California, and New York. The "Minor States" mean any and all states within the United States other than the Major States and any and all other countries, in each case where the Company has conducted business prior to the Closing Date.

(vii) For the avoidance of doubt, the Buyer shall have the right, in its sole discretion, to file any Tax Return or amended Tax Return (including any voluntary disclosure agreement or similar agreement), apply for or participate in any voluntary disclosure program or remit any sales Tax, use Tax or similar Tax for any taxable period beginning on or after the Closing Date provided that Buyer shall comply with the foregoing provisions of this Section 5.11(d).

(e) Cooperation, Access to Information, and Records Retention. The Representative and Buyer shall cooperate, and cause their representatives and affiliates to cooperate, as and to the extent reasonably requested by the other in connection with the preparation and filing of Tax Returns as provided herein and any audit, litigation or other proceeding with respect to Taxes relating to the Company. Such cooperation shall include the provision of records and information which are reasonably relevant to any such Tax Return, 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. Buyer agrees (i) to retain all books and records relevant to Taxes of the Company (including Tax Returns) relating to any taxable period beginning before the Closing Date until the earlier of two years after the Closing Date or expiration of the statute of limitations for assessment of Taxes for such respective taxable period, and (ii) to give the Representative reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the Representative so requests, Buyer shall allow the Representative to take possession or copy of such books and records.

(f) Tax Certificates. Buyer and the Representative agree, upon request of the other, to use all reasonable efforts to obtain any certificate or other document from any Governmental Authority as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the Mergers).

5.12 Directors' and Officers' Insurance and Indemnification.

(a) From the First Merger Effective Time until the sixth anniversary of the date on which the First Merger Effective Time occurs, all rights to indemnification by the Company existing in favor of those Persons who are directors and officers of the Company as of the date of this Agreement (the "**D&O Indemnified Persons**") for their acts and omissions occurring prior to the First Merger Effective Time, as provided in the articles of incorporation and bylaws of the Company shall survive the Mergers and shall be observed by the Surviving Company to the fullest extent available under applicable law.

(b) Prior to the Closing, the Company shall purchase an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance policy in effect on the date of this Agreement (the "**Current Policy**") for the D&O Indemnified Persons (the "Tail Policy"). The Company shall be responsible for the cost of the Tail Policy and such amount shall be deemed a Company Transaction Expense under Section 9.9(a) hereof. The Tail Policy purchased by the Company shall provide the D&O Indemnified Persons with coverage for six (6) years from and after the First Merger Effective Time with respect to acts or omissions occurring at or prior to the First Merger Effective Time and shall contain terms and coverage amounts at least as favorable as the terms and coverage amounts of the Current Policy. For the period of six (6) years from and after the First Merger Effective Time, the Surviving Company shall not cancel or amend the Tail Policy.

5.13 Payment of Accrued Vacation. Prior to the Closing, the Company shall pay to each Company employee all accrued vacation owed to such person as of the Closing that is in excess of ten (10) days.

5.14 Repayment of Employee Loans. At the Closing, the Company shall cause the loans set forth on Schedule 3.6(d) to be repaid in full from the Merger Consideration payable to such Company Party.

ARTICLE VI
CONDITIONS TO THE MERGERS

6.1 Conditions to Obligations of Each Party to Effect the Mergers. The respective obligations of the Company, Buyer and Merger Subs to effect the Mergers shall be subject to the satisfaction, at or prior to the First Merger Effective Time, of the following conditions:

(a) Stockholder Approval. The Required Stockholder Approval shall have been obtained.

(b) No Order; Injunctions; Restraints; Illegality. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule regulation, executive order, decree, injunction, Order or other legal restraint (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Mergers illegal or otherwise prohibiting or preventing consummation of the Mergers; provided, however, that prior to asserting this condition; such Party shall have used their reasonable best efforts to prevent the entry of such Order or other legal restraint and to appeal as promptly as possible any such Order or legal restraint.

(c) Other Governmental Approval. All consents, approvals, permits and authorizations required to be obtained prior to the First Merger Effective Time from any Governmental Authority in connection with the execution and delivery of this Agreement and the transactions contemplated hereby shall have been obtained.

6.2 Conditions to the Obligations of Buyer and Merger Subs. The obligations of Buyer and the Merger Subs to effect the Mergers shall be subject to the satisfaction at or prior to the First Merger Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by Buyer:

(a) Representations and Warranties. The representations and warranties of the Company in this Agreement shall have been true and correct in all respects on the date they were made and shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or Company Material Adverse Effect set forth therein) on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than such representations and warranties made as of a specified date, which shall be true and correct as of such date).

(b) Covenants. The Company shall have performed and complied in all material respects with each of the covenants and obligations under this Agreement required to be performed and complied with by the Company as of the Closing.

(c) No Material Adverse Effect. Since the date hereof, there shall not have occurred any Company Material Adverse Effect.

(d) Appraisal Rights. Stockholders holding (i) at least ninety-five percent (95%) of the total number of shares of Company Common Stock (on a fully-diluted basis) outstanding immediately prior to the First Merger Effective Time shall have approved the Mergers, approved and adopted this Agreement and approved the transactions contemplated hereby, and (ii) no more than five percent (5%) of the total number of shares of Company Stock outstanding immediately prior to the First Merger Effective Time shall have perfected, or continue to have a right to exercise, appraisal or other similar rights under applicable Law with respect to their Company Stock by virtue of the Mergers.

(e) Third Party Consents. The Company shall have delivered to Buyer all necessary consents, waivers and approvals and delivered all notices set forth in Schedule 3.4.

(f) Joinder. Each Accredited Company Party shall have executed and delivered a Joinder to Buyer.

(g) Employees. Each of the Company's employees shall have executed and delivered an Employee Proprietary Information Agreement in the form attached hereto as Exhibit G.

(h) Non-Solicitation and Non-Competition Agreements. Each Person listed in Schedule 6.2(h) shall have executed a Non-Solicitation and Non-Competition Agreement, in the form attached hereto as Exhibit H.

6.3 Deliveries by the Company. On the Closing Date, the Company shall deliver all of the following to Buyer:

(a) a certificate of the secretary of the Company, dated as of the Closing Date, certifying as to (i) the Company's Articles of Incorporation and bylaws, (ii) the resolutions of the Board of Directors of the Company and the Stockholder Written Consent authorizing the execution and performance of this Agreement and the transactions contemplated hereby and (iii) the incumbency of its officers;

(b) a certificate from the Company, validly executed by the Chief Executive Officer of the Company for and on the Company's behalf, as to the satisfaction of the conditions set forth in Sections 6.2(a) and (b);

(c) the Closing Statement;

(d) the Allocation Schedule;

(e) the Pay-Off Letters and other documentation reasonably satisfactory to the Buyer evidencing the amount of any Closing Indebtedness;

(f) a Certificate of Good Standing from the Secretary of State of Texas and any other applicable Governmental Authority in each jurisdiction where the Company is qualified to do business, all of which are dated within five (5) Business Days prior to Closing;

(g) an affidavit, in form and substance reasonably satisfactory to Buyer and in compliance with Treasury Regulation Section 1.1445-2;

(h) evidence, in form and substance reasonably satisfactory to Buyer, of the Company's purchase at its sole expense of: (A) an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance coverage for the Company's directors and officers that shall provide such directors and officers with coverage for six (6) years following the First Merger Effective Time of not less than the existing coverage under, and have other terms not materially less favorable to the insured persons than, the directors' and officers' liability insurance coverage presently maintained by the Company; and (B) three (3) year tail coverage for the Company's errors and omissions professional liability coverage and fiduciary liability coverage;

(i) evidence, in form and substance reasonably satisfactory to Buyer, of termination of applicable Plans, programs and other arrangements pursuant to Section 5.10;

(j) evidence, in form and substance reasonably satisfactory to Buyer, of termination of the Company Shareholders' Agreement;

(k) delivery of netVigilance assignment/waiver in the form previously approved by Buyer;

(l) a copy of the Escrow Agreement, executed by the Representative, the Company and the Escrow Agent; and

(m) any other items to be delivered by the Company under the terms and provisions of this Agreement or reasonably requested by Buyer.

6.4 Conditions to Obligations of the Company. The obligations of the Company to effect the Mergers shall be subject to the satisfaction at or prior to the First Merger Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations and Warranties. The representations and warranties of Buyer and the Merger Subs in this Agreement shall have been true and correct in all respects when made and shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or Buyer Material Adverse Effect set forth therein) on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than the representations and warranties of Buyer and the Merger Subs as of a specified date, which shall be true and correct as of such date).

(b) Covenants. Each of Buyer, Merger Sub (Corp) and Merger Sub (LLC) shall have performed and complied with all covenants and obligations under this Agreement required to be performed and complied with by such parties as of the Closing.

(c) No Material Adverse Effect. Since the date hereof, there shall not have occurred any Buyer Material Adverse Effect.

(d) Qualifications. All authorizations, approvals or permits, if any, of any Governmental Authority that are required in connection with the consummation of the Mergers and the lawful issuance and sale of the Buyer Stock in connection with this Agreement will be obtained and effective.

6.5 Deliveries by Buyer and Merger Subs. At the Closing, all of the following shall be delivered to the Company by Buyer and/or the Merger Subs, as appropriate:

(a) a certificate of the secretary of Buyer, dated as of the date hereof, as to (i) Buyer's Certificate of Incorporation and bylaws each as in effect and full force immediately prior to Closing, (ii) the resolutions of the Board of Directors and stockholders of the Buyer authorizing the execution and performance of this Agreement and the transactions contemplated hereby and (iii) the incumbency of its officers;

(b) a certificate from Buyer, validly executed by the Chief Executive Officer or Chief Financial Officer of Buyer for and on Buyer's behalf, as to the satisfaction of the conditions set forth in Sections 6.4(a) and (b);

(c) all authorizations, approvals or permits, if any, of any Governmental Authority that are required in connection with the lawful issuance and sale of the Buyer Stock in connection with this Agreement will be obtained and effective;

(d) a Certificate of Good Standing from the Secretary of State of Delaware dated within five (5) Business Days prior to Closing;

(e) a copy of the Escrow Agreement, executed by Buyer and the Escrow Agent;

any other items to be delivered by Buyer and/or the Merger Subs under the terms and provisions of this Agreement or reasonably requested by the Company.

ARTICLE VII
TERMINATION, AMENDMENT AND WAIVER

7.1 Termination. Except as provided in Section 7.2 hereof, this Agreement may be terminated and the Mergers abandoned at any time prior to the First Merger Effective Time:

(a) by mutual agreement of the Buyer and the Company, which shall have been approved by the action of their respective boards of directors;

(b) by the Buyer if the Required Stockholder Approval is not obtained within two (2) days after the execution of this Agreement;

(c) by the Buyer or the Company, if the Closing Date shall not have occurred by December 31, 2014, provided, however, that the right to terminate this Agreement under this Section 7.1(c) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Mergers to occur on or before such date and such action or failure to act constitutes material breach of this Agreement;

(d) by the Buyer or the Company, if any Governmental Authority shall have enacted, issued, promulgated, enforced or entered, or threatens to enact, issue, promulgate, enforce or enter any statute, rule, regulation, executive order, decree, injunction, order or other legal restraint which is in effect and which has the effect of making the Mergers illegal;

(e) by the Buyer, if there shall have occurred any event or condition of any kind or character that has had, either individually or in the aggregate with all such other events or conditions, a Company Material Adverse Effect;

(f) by the Company, if there shall have occurred any event or condition of any kind or character that has had, either individually or in the aggregate with all such other events or conditions, a Buyer Material Adverse Effect;

(g) by the Buyer, if Buyer is not in material breach of any of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement of the Company set forth in this Agreement such that the conditions set forth in Section 6.2(a) hereof would not be satisfied, and such breach has not been cured within fifteen (15) calendar days after written notice thereof of the Company; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured;

(h) by the Company, if the Company is not in material breach of any of its obligations under this Agreement, and there has been a breach of any representation, warranty, covenant or agreement of Buyer or the Merger Subs set forth in this Agreement such that the conditions set forth in Section 6.4(a) hereof would not be satisfied, and such breach has not been cured within thirty (30) calendar days after written notice thereof to Buyer; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured; or

(i) by the Buyer, if the Company's board of directors revokes, or adversely alters, modifies or changes the Recommendation.

7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Buyer, the Merger Subs or the Company, or any of their respective directors, officers or other employees, or stockholders, if applicable; provided, however, that each party hereto shall remain liable for any willful and intentional breaches of this Agreement by such party that occurred prior to its termination; provided further, however, that the provisions of Section 5.7 (Confidentiality/Public Disclosure), ARTICLE IX (Miscellaneous) and this Section 7.2 shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this ARTICLE VII.

7.3 Amendment. Prior to the Closing, this Agreement may only be amended by a writing executed by Buyer and the Company. After the Closing, this Agreement may only be amended by a writing executed by Buyer and the Representative.

7.4 Extension; Waiver. At any time prior to the First Merger Effective Time, Buyer and the Company, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations of the other party hereto, (b) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (c) waive any of the covenants, agreements or conditions for the benefit of such party contained herein. Any agreement on the party of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

ARTICLE VIII
SURVIVAL; INDEMNIFICATION

8.1 Survival. The representations and warranties of the Parties contained in this Agreement or in any certificates or other writing delivered pursuant to this Agreement or in connection herewith will survive the Closing until the twelve (12) month anniversary of the Closing (the "**Release Date**"); provided, that (a) claims for fraud, willful misconduct and intentional misrepresentations will survive the Closing indefinitely, (b) the Specified Representations will survive the Closing until expiration of the applicable statute of limitations, (c) the representations and warranties set forth in Section 3.17 (Intellectual Property) will survive the Closing until the third anniversary of the Closing, and (d) the representations and warranties and certifications contained in the certificates delivered pursuant to Sections 6.3(b) and 6.5(b) shall survive for the same duration that the representations and warranties to which they are applicable survive. Notwithstanding the foregoing, any claim for breach of a representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to this section if written notice of such claim has been given to the Party against whom such indemnification may be sought prior to the end of the applicable survival period described in this Section 8.1. Subject to the foregoing and any applicable statutes of limitations, all covenants and agreements of the parties contained in this Agreement will survive the Closing until fully performed.

8.2 Indemnification by the Company Parties.

(a) Subject to the limitations herein, from and after the First Merger Effective Time, the Company Parties, severally, but not jointly in accordance with each Company Party's Pro Rata Share, shall indemnify, defend, and hold harmless the Buyer and its officers, directors, employees, representatives, and Affiliates, including the Company and the Surviving Company (the "**Buyer Indemnified Parties**") against any and all liabilities, damages, losses (including diminution in value of the Surviving Company or the Buyer Indemnified Parties' interests in the Company), costs and expenses (including reasonable attorneys' and consultants' fees and expenses) ("**Damages**"), incurred or suffered by the Buyer Indemnified Parties as a result of, relating to or arising out of, (i) any breach of or inaccuracy in any representation or warranty made by the Company in this Agreement or any certificate delivered pursuant hereto (without giving effect to any qualification as to "materiality," Company Material Adverse Effect or similar words contained or incorporated in any such representation or warranty), (ii) any breach of any covenant or agreement of the Company or the Company Parties in this Agreement, (iii) any exercise of any dissenters' rights or appraisal rights, (iv) any Company Transaction Expenses to the extent not paid at Closing or accrued as a liability in the Closing Date Working Capital, (v) any and all Taxes (or the non-payment thereof) of the Surviving Company (or the Company) for any Pre-Closing Tax Period except to the extent such Taxes have been accrued as a liability in the Closing Date Working Capital and reduced the Merger Consideration dollar-for-dollar, (vi) any and all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or its predecessor) is or was a member prior to the Closing Date, including pursuant to Treasury Regulations Section 1.1502-6 or any similar state, local or foreign Law, except to the extent such Taxes have been accrued as a liability in the Closing Date Working Capital and reduced the Merger Consideration dollar-for-dollar, (vii) any and all Taxes of any Person imposed on the Surviving Company (or the Company) as a transferee or successor, by contract or pursuant to any Law, which Taxes relate to an event or transaction occurring before the Closing Date, except to the extent such Taxes have been accrued as a liability in the Closing Date Working Capital and reduced the Merger Consideration dollar-for-dollar, (viii) any Company Indebtedness to the extent not paid at Closing or accrued as a liability in the Closing Date Working Capital, (ix) any legal proceedings asserted or held by any current, former or alleged holder of the Company's securities, in such Person's capacity (or alleged capacity) as a securityholder of the Company, relating to this Agreement, any other Transaction Document, the Mergers or any of the other transactions contemplated by this Agreement with respect to matters accruing prior to the Closing Date, (x) any and all Sales Taxes, and (xi) any of the matters set forth in Schedule 3.10, Schedule 3.17(g) and Schedule 3.17(j).

(b) Annualized Recurring Revenues.

(i) If on the first anniversary of the Closing Date (the "**Measurement Date**"), the sum of (i) the amount of the Company's Annualized Recurring Revenue and (ii) two (2) times the amount of Buyer Revenue is less than the Target Amount, then Buyer shall be entitled to receive a payment from the General Escrow Amount equal to one (1) times the difference between (x) 80% of the Target Amount and (y) Total Revenues (the "**Revenue Shortfall**"), but not to exceed $500,000. Buyer shall not take any action in bad faith or that is intended to reduce or has the expected consequence or effect of reducing Annualized Recurring Revenue.

(ii) Within thirty (30) days following the Measurement Date, Buyer shall provide to the Representative a statement of the Total Revenues (the "**Revenue Statement**"). The Representative shall have thirty (30) days after receipt of the Revenue Statement to either accept the calculations therein or provide a written objection to the calculations. Buyer shall make the work papers, backup materials, and books and records used in preparing the calculation of the Company's Revenue Statement available to the Representative and its accountants at reasonable times and upon prior notice

following the delivery of the Revenue Statement by Buyer to the Representative; provided that Buyer and the Representative shall first make mutually acceptable arrangements to preserve Buyer's attorney-client or work-product privilege with respect to any such information. Any dispute concerning the Revenue Statement and the calculations therein shall be resolved in accordance with the procedures set forth in Section 2.6(b)(ii). In the event of Revenue Shortfall, as finally determined in accordance with this Section 8.2(b) Buyer and the Representative shall deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to disperse to Buyer a portion of the Escrow Fund equal to the Revenue Shortfall (but not to exceed $500,000).

(c) In no event shall the Buyer Indemnified Parties be entitled to recover any Damages pursuant to Section 8.2(a)(i) until aggregate Damages as a result of all claims successfully made pursuant to Section 8.2(a)(i) exceed $60,000, at which point the Buyer Indemnified Parties shall be entitled to recover for all Damages, including the first $60,000; *provided*, that such limitation shall not apply to claims related to or arising from fraud, willful misconduct or intentional misrepresentation or breaches of the Specified Representations applicable to the Company or the representations and warranties set forth in Section 3.17 (Intellectual Property), for which, in each case, the Company Parties shall be liable for all Damages and such Damages shall not count against the $60,000 threshold set forth in this sentence. The Company Parties' aggregate liability pursuant to Section 8.2(a)(i) shall not exceed the General Escrow Amount (the "**Cap**") for all breaches of representations and warranties other than (i) the Specified Representations, for which the Company Parties' aggregate liability shall not exceed the Merger Consideration; (ii) the representations and warranties set forth in Section 3.17 (Intellectual Property), for which the Company Parties' aggregate liability shall not exceed (A) $6,600,000, if written notice of such claim is delivered to the Indemnifying Party (as defined below) on or prior to the first anniversary of the Closing, (B) $4,400,000, if written notice of such claim is delivered to the Indemnifying Party after the first anniversary of the Closing but on or prior to the second anniversary of the Closing, and (C) $2,200,000, if written notice of such claim is delivered to the Indemnifying Party after the second anniversary of the Closing but on or prior to the third anniversary of the Closing; and (iii) claims related to or arising from fraud, willful misconduct or intentional misrepresentation, for which the Company Parties' liability shall not be limited. Except for fraud, willful misconduct or intentional misrepresentation, the Company Parties' aggregate liability under this Agreement shall not in any event exceed the Merger Consideration.

(d) If any Buyer Indemnified Party is entitled to receive any amount from the Company Parties under this ARTICLE VIII, then (i) if such amount relates to claims for Sales Tax under Section 8.2(a)(x), the Buyer Indemnified Party shall first seek recovery from the Tax Escrow Fund, and then from the General Escrow Fund, and (ii) if such amount relates to any claims other than Sales Tax under Section 8.2(a)(x), the Buyer Indemnified Party shall seek recovery from the General Escrow Fund but in no event from the Tax Escrow Fund. To the extent the Escrow Fund is insufficient to satisfy an indemnification obligation owed to a Buyer Indemnified Party, then subject to the limitations in Section 8.2(c) the Company Parties shall be obligated to pay severally such Company Party's respective Pro Rata Share of any remaining indemnification obligation owed under this ARTICLE VIII. Any amount payable by the Company Parties pursuant to the immediately preceding sentence shall be paid by wire transfer of immediately available funds to an account designated by the Buyer or by forfeiture (for no consideration) of shares of Buyer Stock, or a combination thereof, as determined by the Representative in his sole discretion; provided, however, any such amount shall not be payable by forfeiture of Buyer Stock to the extent that such forfeiture would result in the aggregate Buyer Stock Value of Buyer Stock not forfeited by the holders of Company Stock being less than forty percent (40%) of the aggregate Merger Consideration received or to be received by such holders (after taking into account all indemnification payments and any other adjustments to the Merger Consideration under this Agreement). For the foregoing purposes, forfeiture of Buyer Stock shall be treated as a payment equal to the Buyer Stock Value of the forfeited Buyer Stock. In furtherance of the foregoing, each Company Party shall execute

and deliver to the Buyer Indemnified Party such documents, instruments and stock powers which may be required to effectuate such forfeiture. The Representative shall give Buyer prompt written notice of such election, and upon the delivery of such notice, the Buyer Stock shall be deemed forfeited and shall cease to be outstanding (whether then held by a Company Party or any other Person) and Buyer shall be entitled to update its records (including its stock transfer ledger) accordingly

(e) By approval of this Agreement, the Company Parties (i) expressly waive any rights of indemnification against the Buyer or Surviving Company for acts, circumstances, and events that give rise to indemnification obligations of the Company Parties arising under this Section 8.2, and (ii) agree and acknowledge that they will have no right of contribution from, or right of subrogation against, the Buyer or Surviving Company in the event any of them is required to take, or refrain from taking, any action, whether by the payment of money or otherwise, as a result of this Section 8.2.

8.3 Indemnification by Buyer.

(a) Buyer shall indemnify, defend, and hold harmless the Company Parties against Damages incurred or suffered by the Company Parties as a result of, relating to or arising out of (i) any breach of or inaccuracy in any representation or warranty made by the Buyer in this Agreement or any certificate delivered pursuant hereto (without giving effect to any qualification as to "materiality," Buyer Material Adverse Effect or similar words contained or incorporated in any such representation or warranty) or (ii) the breach of any covenant or agreement made or to be performed by the Buyer pursuant to this Agreement.

(b) Buyer shall not be liable pursuant to Section 8.3(a)(i) until aggregate Damages as a result of all claims successfully made pursuant to Section 8.3(a)(i) exceed $60,000, at which point Buyer shall be liable for all Damages including the first $60,000; provided, that such limitation shall not apply to Buyer's failure to pay the Merger Consideration or to claims related to or arising from fraud, willful misconduct or intentional misrepresentation, for which, in each case, Buyer's liability shall not be limited. Buyer's aggregate liability pursuant to Section 8.3(a) shall not exceed the Cap, other than Buyer's failure to pay the Merger Consideration (or any adjustment thereto) and claims related to or arising from fraud, willful misconduct or intentional misrepresentation.

(c) Notwithstanding anything to the contrary contained in this Agreement, for purposes of determining the amount of any Damages that are the subject matter of a claim for indemnification for the breach of a representation or warranty hereunder, each representation and warranty contained in this Agreement shall be read without regard and without giving effect to any materiality or material adverse effect or like standard or qualification contained in such representation or warranty.

8.4 Procedures for Claims.

(a) If any Person who or which is entitled to seek indemnification under ARTICLE VIII (an "**Indemnified Party**") receives notice of the assertion or commencement of any Third Party Claim against such Indemnified Party with respect to which the Person against whom or which such indemnification is being sought (an "**Indemnifying Party**") is obligated to provide indemnification under this Agreement, the Indemnified Party will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after receipt of such written notice of such Third Party Claim. Such notice by the Indemnified Party will describe the Third Party Claim in reasonable detail, will include copies of all available material written evidence thereof, and will indicate the estimated amount, if reasonably practicable, of the Damages that have been or may be sustained by the Indemnified Party. The Indemnifying Party will have the right to participate in, or, by giving written

notice to the Indemnified Party, to assume the defense of, any Third Party Claim at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel (reasonably satisfactory to the Indemnified Party), and the Indemnified Party will cooperate in good faith in such defense; provided, that the Indemnifying Party will not have any right to assume the defense of a Third Party Claim if (A) such Third Party Claim is reasonably foreseeable to result in Damages more than the amount indemnifiable by such Indemnifying Person pursuant to this ARTICLE VIII; (B) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation; (C) the claim seeks an injunction or equitable relief against the Indemnified Person; (D) the Indemnified Person has been advised in writing by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnifying Person and the Indemnified Person; or (E) upon petition by the Indemnified Person, the appropriate court rules that the Indemnifying Person failed or is failing to vigorously prosecute or defend such Third Party Claim.

(b) If, within 20 days after giving notice of a Third Party Claim to an Indemnifying Party pursuant to Section 8.4(a), an Indemnified Party receives written notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 8.4(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; *provided, however*, that (i) if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third Party Claim within 20 days after receiving written notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Damages relating to the matter, the Indemnified Party may assume its own defense, and (ii) the Indemnified Party may employ separate counsel if in the written opinion of counsel to the Indemnified Party use of counsel of the Indemnifying Party's choice would be expected to give rise to a conflict of interest at its own expense. In the event the Indemnifying Party assumes the defense, without the prior written consent of the Indemnified Party (not to be unreasonably withheld or delayed), the Indemnifying Party will not enter into any settlement of any Third Party Claim that would lead to loss, liability, or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder, or which provides for injunctive or other non-monetary relief applicable to the Indemnified Party, or (except in respect to Taxes) does not include an unconditional release of all Indemnified Parties.

(c) Any claim by an Indemnified Party on account of Damages that does not result from a Third Party Claim (a "**Direct Claim**") will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. Such notice by the Indemnified Party will describe the Direct Claim in reasonable detail, will include copies of all available material written evidence thereof, and will indicate the estimated amount, if reasonably practicable, of Damages that has been or may be sustained by the Indemnified Party. The Indemnifying Party will have a period of 30 days within which to respond in writing to such Direct Claim. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party will be deemed to have rejected such claim, in which event the Indemnified Party will be free to pursue such remedies as may be available to the Indemnified Party at the Indemnifying Party's expense pursuant to the terms and subject to the provisions of this Agreement.

(d) A failure to give timely notice or to include any specified information in any notice as provided in ARTICLE VIII will not affect the rights or obligations of any Party, except and only to the extent that, as a result of such failure, any Party that was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise prejudiced as a result of such failure.

(e) For purposes of this ARTICLE VIII, (i) for indemnification claims made pursuant to Section 8.2, any references to the Indemnifying Party (except provisions relating to an obligation to make any payments) shall be deemed to refer to the Representative and (ii) for indemnification claims made pursuant to Section 8.3, any references to the Indemnified Party (except provisions relating to an obligation to make or a right to receive any payments) shall be deemed to refer to the Representative.

8.5 Exclusive Remedy. Subject to Section 9.5(a), the indemnification provisions of this ARTICLE VIII shall be the sole and exclusive remedy following the Closing for any claims relating to this Agreement and the transactions contemplated hereby, except for claims related to or arising from fraud, willful misconduct or intentional misrepresentation.

8.6 Use of Insurance. Damages for which indemnification is provided pursuant to Section 8.2 or Section 8.3 of this Agreement shall be net of any amounts that are actually recovered by the Indemnified Person under any insurance policy with respect to such Damages (net of any costs of collection or increased rates or future costs resulting from making any claim thereunder).

8.7 Purchase Price Adjustment. The Parties agree that any indemnification payment made pursuant to this Agreement shall be treated as an adjustment to the Merger Consideration for Tax purposes, unless otherwise required by Law.

8.8 Knowledge. The Parties hereby agree and acknowledge that any Indemnified Party may bring an indemnification claim under this ARTICLE VIII notwithstanding such Indemnified Party's knowledge of the breach, event or circumstance giving rise to such Damages prior to the Closing or having waived any conditions to the Closing related thereto.

ARTICLE IX
MISCELLANEOUS

9.1 Binding Effect; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their successors and permitted assigns. Without the prior written consent of the other parties hereto, no Party may assign any of its rights, duties or obligations hereunder or any part thereof to any other Person.

9.2 Notices. Except as may be otherwise provided herein, all notices, requests, waivers and other communications under this Agreement shall be in writing and shall be conclusively deemed delivered and effective (a) when hand delivered to the other party; (b) five (5) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (c) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next Business Day delivery; or (d) in the case of a facsimile transmission, upon transmission thereof by the sender and the issuance by the transmitting machine of a confirmation slip confirming that the number of pages constituting the notice have been transmitted without error:

If, prior to the Closing to the Company, to:

Achilles Guard, Inc. (d/b/a Critical Watch)
4201 Spring Valley Road, Suite 1400
Dallas, TX 75244
Phone: 214-623-5511
Attention: Nelson Bunker

with a copy to:

Locke Lord LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201
Facsimile: 214-756-8553
Attention: Jack E. Jacobsen

If to the Representative, to:

Nelson Bunker
4201 Spring Valley Road, Suite 1400
Dallas, TX 75244
Phone: 214-623-5511

with a copy to:

Locke Lord LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201
Facsimile: 214-756-8553
Attention: Jack E. Jacobsen

If to Buyer, to:

Alert Logic, Inc.
1776 Yorktown Street, 7th Floor
Houston, Texas 77056
Phone: (713) 484-8383
Fax: (713) 660-7988
Attention: Chief Executive Officer

With a copy to:

DLA Piper LLP (US)
1201 West Peachtree Street, Suite 2800
Atlanta, GA 30309-3454
Phone: (404) 736-7854
Fax: (404) 682-7854
Attention: Joseph G. Silver

Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section.

9.3 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any current or future Law, and if the rights or obligations of the parties under this Agreement would not be materially and adversely affected thereby, such provision shall be fully separable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision.

9.4 Governing Law. This Agreement and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or related to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by and construed in accordance with the Laws of the State of Delaware in all respects without giving effect to principles of conflicts of Law that would require the application of any other Law. No provision of this Agreement or any Transaction Document shall be construed against or interpreted to the disadvantage of any party hereto by any court or other Governmental Authority by reason of such party's having or being deemed to have structured or drafted such provision.

9.5 Specific Enforcement; Consent to Jurisdiction; Waiver of Jury Trial.

(a) Each of the parties hereto acknowledges and agrees that the other parties hereto would be irreparably damaged if any of the provisions of this Agreement were not performed in accordance with their specific terms and that any breach of this Agreement by any of the parties hereto could not be adequately compensated in all cases by monetary damages alone. In addition to any other right or remedy to which the parties hereto may be entitled, in law or in equity, the parties hereto shall be entitled to enforcement of any provision of this Agreement (including Buyer's obligation to deliver the Merger Consideration hereunder), by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement without posting any bond or other undertaking, and may seek such decree or relief before any court of competent jurisdiction.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any Delaware state court or federal court of the United States of America sitting in the District of Delaware, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that, all claims in respect of any such action or proceeding may be heard and determined in any such Delaware state court, or, to the extent permitted by Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to the Agreement in any Delaware state or federal court. Each of the parties hereto irrevocably waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE,

CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE.

9.6 Entire Agreement. This Agreement, the Transaction Documents and the Schedules and Exhibits attached hereto embody the entire agreement of the parties hereto relating to the subject matter hereof and supersede all prior oral or written agreements between said parties with respect to said subject matter, including the Non-Binding Terms Sheet dated August 27, 2014.

9.7 Counterparts; Facsimile Signatures. This Agreement may be executed by facsimile and in any number of counterparts, each of which so executed shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission (including documents in PDF format) shall be effective as delivery of a manually executed counterpart to this Agreement.

9.8 No Third-Party Beneficiaries. Except as expressly provided herein, this Agreement is for the sole benefit of the parties and their permitted successors and assignees and nothing herein expressed or implied will give or be construed to give any Person, other than the parties and such successors and assignees, any legal or equitable rights hereunder.

9.9 Fees and Expenses; Transfer Taxes.

(a) The Stockholders will bear the costs and expenses (including legal and brokerage fees and expenses) incurred by them and, prior to the First Merger Effective Time, the Company in connection with this Agreement, the Transaction Documents and the Mergers (the "**Company Transaction Expenses**") and Buyer will bear the costs and expenses (including legal fees and expenses) incurred by itself, Merger Subs and the Surviving Company.

(b) Notwithstanding anything herein to the contrary, all transfer, documentary, sales, use, stamp, registration and other similar Taxes incurred by the Company or any Company Party in connection with this Agreement shall be borne 50% by Company Parties and 50% by Buyer. The party required by applicable Law to file the necessary Tax Returns and other documentation with respect to all such Taxes and fees shall file such Tax Returns (with the cost thereof borne 50% by the Company Parties and 50% by Buyer) and, if required by applicable Law, the other parties will join in the execution of any such Tax Returns and other documentation.

9.10 Headings. The headings of the sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

9.11 Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state or local statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "**including**" shall mean including without limitation. Wherever required by the context, as used in this Agreement, the singular number shall include the plural, the plural shall include the singular and all words herein in any gender shall be deemed to include the masculine, feminine and neutral genders. The Parties hereto intend that each representation, warranty, and covenant contained herein shall have independent significance.

9.12 Representative.

(a) By the approval of this Agreement, and without any further action on the part of any Company Party (collectively, the "**Represented Parties**", individually, a "**Represented Party**"), each Represented Party hereby irrevocably constitutes and appoints the Representative as the true and lawful agent and attorney-in-fact of such Represented Party with full power of substitution and authority to act in the name, place and stead of the Represented Parties with respect to the Mergers and the transactions contemplated by this Agreement, and to act on behalf of the Represented Parties in any litigation or arbitration involving this Agreement, to do or refrain from doing all such further acts and things, and to execute all such documents as the Representative shall deem necessary or appropriate in connection with the transactions contemplated by this Agreement, including the power to (i) act for the Represented Parties with regard to all matters pertaining to indemnification referred to in this Agreement, including the power to compromise any indemnity claim on behalf of the Represented Parties and to transact matters of litigation, (ii) execute and deliver all amendments, waivers, ancillary agreements, stock powers, certificates and documents that the Representative deems necessary or appropriate in connection with the consummation of the transactions contemplated by this Agreement, (iii) receive funds, make payments of funds, and to withhold a portion of any amounts to be paid to the Represented Parties hereunder or any other payments to be made pursuant to this Agreement to pay any amounts that the Representative has incurred or reasonably expects to incur in connection with the Represented Parties' obligations under this Agreement, including amounts required to pay the fees and expenses of professionals incurred in connection with the transactions contemplated by this Agreement, (iv) do or refrain from doing any further act or deed on behalf of the Represented Parties that the Representative deems necessary or appropriate in his sole discretion relating to the subject matter of this Agreement as fully and completely as the Represented Parties could do if personally present, and (v) receive service of process in connection with any claims under this Agreement.

(b) The appointment of the Representative shall be deemed coupled with an interest and shall be irrevocable, and Buyer and any other Person may conclusively and absolutely rely, without inquiry, upon any action of the Representative in all matters referred to herein. The Represented Parties hereby confirm all that the Representative shall do or cause to be done by virtue of his appointment as the Representative of the Represented Parties. The Representative shall act for all Represented Parties on all of the matters set forth in this Agreement in the manner the Representative believes to be in the best interest of the Represented Parties and consistent with the obligations under this Agreement, but the Representative shall not be responsible to the Represented Parties for any losses or damages the Represented Parties may suffer by the performance of his duties under this Agreement (or any failure to perform such duties) and the Represented Parties shall fully indemnify, on a joint and several basis, the Representative from and against any such losses or damages, other than any such losses or damages arising from his willful violation of any applicable Law or gross negligence in the performance of his duties as the Representative under this Agreement. The Representative may, in all questions arising hereunder, rely on the advice of counsel and other professionals, and for anything done, omitted or suffered in good faith by the Representative based on such advice, the Representative shall not be liable to anyone. The Representative will not be required to take any action involving any expense unless the payment of such expense is made as provided for in a manner satisfactory to it. Notwithstanding anything to the contrary contained in this Agreement, the Representative shall have no duties or responsibilities except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities on behalf of any Represented Party shall otherwise exist against the Representative.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have hereunto executed this Agreement and Plan of Merger as of the day and year first above written.

THE COMPANY:

ACHILLES GUARD, INC., D/B/A CRITICAL WATCH

By: _____
Name: Eva Bunker
Title: Chief Executive Officer

BUYER:

ALERT LOGIC, INC.

By: _____
Name: Gray Hall
Title: Chief Executive Officer

MERGER SUB (LLC):

ALCW ACQUISITION COMPANY LLC

By: _____
Name: Gray Hall
Title: Chief Executive Officer

MERGER SUB (CORP):

ALCW ACQUISITION CORPORATION

By: _____
Name: Gray Hall
Title: Chief Executive Officer

REPRESENTATIVE:

By: _____
Nelson Bunker

Definitions

"**401(k) Plan**" has the meaning set forth in Section 5.10.

"**Accounting Referee**" has the meaning set forth in Section 2.6(b)(ii).

"**Accounts Receivable**" means all accounts receivable, including trade and miscellaneous accounts receivable, arising out of the Company's business.

"**Accredited Company Party**" means a Company Party that has completed and delivered to Buyer an Accredited Investor Questionnaire no later than two (2) Business Days prior to the Closing Date indicating that such Company Party is an accredited investor as defined in Rule 501 of Regulation D under the Securities Act.

"**Act**" has the meaning set forth in the Recitals.

"**Acquisition Proposal**" has the meaning set forth in Section 5.3(a).

"**Affiliate**" means with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with the first Person. For the purposes of this definition, "control," when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Aggregate Exercise Price**" means the aggregate exercise price of all Vested Company Options.

"**Agreement**" has the meaning set forth in the Preamble.

"**Allocation Schedule**" has the meaning set forth in Section 2.6(a).

"**Annualized Recurring Revenue**" means all revenues of the Company between the Closing Date and the Measurement Date (measured on an annualized basis) other than revenues from capital expenditure purchases, installation and training fees, one-time consulting projects or current IBM license fees (and for clarification, annual support and maintenance fees from IBM will be included in the calculation). Notwithstanding the foregoing, with respect to (i) any customer that terminates its relationship with the Company within sixty (60) days following the Closing Date, (ii) any customer that ceases to operate or files for bankruptcy or a similar proceeding prior to the Measurement Date, (iii) any customer that terminates its relationship with the Company due to Buyer or the Company terminating a product or support, in any such event the revenues from such customer on an annualized basis immediately prior to Closing shall be counted as Annualized Recurring Revenues, or (iv) Buyer or the Company discontinuing a product of the Company. In addition, to the extent any customer of the Company whose revenues are included in Buyer Revenues but the amount is less on an annualized basis than such revenues were of the Company prior to Closing, the shortfall shall be counted as Annualized Recurring Revenues.

"**Business Day**" means a day other than Saturday, Sunday or a day on which banks in New York, New York and Houston, Texas are not required to be open or are authorized to remain closed.

"**Buyer**" has the meaning set forth in the Preamble.

"**Buyer Common Stock**" means the Class B Common Stock, $0.01 par value, of the Buyer.

"**Buyer Indemnified Parties**" has the meaning set forth in Section 8.2(a).

"**Buyer Material Adverse Effect**" means a material adverse effect on the assets (including intangible assets), liabilities, financial condition, property, or results of operations of Buyer, or on the ability of the Buyer to perform its obligations under this Agreement, or under any other Transaction Documents; provided that "Buyer Material Adverse Effect" shall not include the effect of any such circumstance, change, development, event or state of facts arising out of or attributable to any of the following, either alone or in combination: (i) the markets in which the Buyer operates generally or the United States economy generally unless such conditions affect the Buyer in a disproportionate manner or to a disproportionate extent, (ii) general worldwide economic or political conditions, unless such conditions affect the Buyer in a disproportionate manner or to a disproportionate extent, (iii) military action or any act of terrorism or any worsening thereof, unless the Buyer is affected thereby in a disproportionate manner, or (iv) compliance with the terms and conditions of this Agreement.

"**Buyer Prepared Return**" has the meaning set forth in Section 5.11(a)(i).

"**Buyer Revenue**" means the total revenues of Buyer between the Closing Date and the Measurement Date that result from Company Customers.

"**Buyer Stock**" means Buyer's Common Stock.

"**Buyer Stock Plan**" has the meaning set forth in Section 4.5(b).

"**Buyer Stock Value**" means $1,262.

"**Buyer Stockholder Agreement**" means the Buyer's Stockholders Agreement dated August 30, 2013.

"**Cancelled Treasury Shares**" has the meaning set forth in Section 2.1(b).

"**Cap**" has the meaning set forth in Section 8.2(b).

"**Capital Stock**" means (a) any shares, interests, participations or other equivalents (however designated) of capital stock of a corporation; (b) any ownership interests in a Person other than a corporation, including membership interests, partnership interests, joint venture interests and beneficial interests; and (c) any warrants, options, convertible or exchangeable securities.

"**Certificates**" has the meaning set forth in Section 2.4(a).

"**Certificates of Merger**" has the meaning set forth in Section 1.3.

"**Closing**" has the meaning set forth in Section 1.3.

"**Closing Buyer Stock Payment**" means a number of shares of Buyer Common Stock equal to (a) $4,700,000, minus the Closing Cash in Lieu of Stock Payment, divided by (b) Buyer Stock Value.

"**Closing Cash in Lieu of Stock Payment**" means $4,700,000 multiplied by a fraction, the numerator of which is the number of Common Stock Equivalents held by Non-Accredited Company Parties and the denominator of which is the number of Common Stock Equivalents.

"**Closing Cash in Lieu of Stock Per Share Amount**" means the Closing Cash in Lieu of Stock Payment divided by the number of Common Stock Equivalents held by Non-Accredited Company Parties.

"**Closing Cash Payment**" means an amount in cash equal to (a) $6,300,000, plus (b) the Estimated Adjustment Amount, if the Estimated Adjustment Amount is a positive number or minus (c) the absolute value of the Estimated Adjustment Amount, if the Estimated Adjustment Amount is a negative number, minus (d) the Escrow Amount, minus (e) the Closing Third Party Payments, minus (f) the employer-paid portion of any employment and payroll Taxes that become payable in connection with the cancellation or exercise of any Company Options or other compensatory payments made in connection with the transactions contemplated by this Agreement.

"**Closing Cash Per Share Amount**" means an amount in cash equal to (A) the sum of the Closing Cash Payment and the Aggregate Exercise Price divided by (B) the number of Common Stock Equivalents.

"**Closing Company Option Payment**" means the portion of the Estimated Merger Consideration payable in respect of the Vested Company Options pursuant to Section 2.2.

"**Closing Date**" means the date on which the Closing occurs.

"**Closing Date Working Capital**" has the meaning set forth in Section 2.6(b)(ii).

"**Closing Date Working Capital Statement**" has the meaning set forth in Section 2.6(b)(i).

"**Closing Indebtedness**" means the Indebtedness of the Company as of the Closing.

"**Closing Third Party Payments**" has the meaning set forth in Section 2.3(a)(iv).

"**Closing Statement**" has the meaning set forth in Section 2.6(a).

"**Closing Stock Per Share Amount**" means the Closing Buyer Stock Payment, divided by Common Stock Equivalents held by Accredited Company Parties.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Common Stock Equivalents**" means, as of immediately prior to the First Merger Effective Time, (a) the number of issued and outstanding Company Common Stock, plus (b) the number of shares of Company Common Stock issuable upon the exercise of outstanding Vested Company Options.

"**Company**" has the meaning set forth in the Preamble.

"**Company Common Stock**" means the issued and outstanding shares of the Company's Common Stock, par value $0.01 per share.

"**Company Financial Statements**" has the meaning set forth in Section 3.7(a).

"**Company Historical Financial Statements**" has the meaning set forth in Section 3.7(a).

"**Company Intellectual Property**" means any and all Intellectual Property that is owned, purported to be owned (in each case whether owned singularly or jointly with a third party or parties), or filed by, assigned to or held in the name of, or exclusively licensed to, the Company.

"**Company Interim Financial Statements**" has the meaning set forth in Section 3.7(a).

"**Company Last Balance Sheet**" has the meaning set forth in Section 3.7(a).

"**Company Material Adverse Effect**" means a material adverse effect on the assets (including intangible assets), liabilities, financial condition, property, or results of operations of the Company, or on the ability of the Company to perform its obligations under this Agreement, or under any other Transaction Documents; provided that "Company Material Adverse Effect" shall not include the effect of any such circumstance, change, development, event or state of facts arising out of or attributable to any of the following, either alone or in combination: (i) the markets in which the Company operates generally or the United States economy generally unless such conditions affect the Company or its industry and markets in a disproportionate manner or to a disproportionate extent, (ii) general worldwide economic or political conditions, unless such conditions affect the Company in a disproportionate manner or to a disproportionate extent, (iii) military action or any act of terrorism or any worsening thereof, unless the Company is affected thereby in a disproportionate manner, (iv) compliance with the terms and conditions of this Agreement, (v) the impact to the Company's relationships with its employees, customers, suppliers or partners as a result of the announcement or pendency of the Mergers, (vi) any stockholder litigation arising from allegations of a breach of fiduciary duty relating to this Agreement and the transactions contemplated hereby, or (vii) any adverse change, effect, event or development arising from or relating to any change in accounting requirements or principles required by GAAP or any change in applicable Laws or the interpretation thereof by any Governmental Authority.

"**Company Option**" means any option to purchase Company Common Stock.

"**Company Parties**" means the holders of Company Stock and/or Company Options.

"**Company Permits**" has the meaning set forth in Section 3.14(b).

"**Company Products**" means all products (including Software) and services (including Software as a service) developed (including products and services for which development is ongoing), including any plugins, libraries and APIs, manufactured, deployed, made commercially available, marketed, distributed, provided, supported, sold, offered for sale, imported or exported for resale, or licensed out by or on behalf of the Company within the past six years prior to the date hereof.

"**Company Real Property**" means any real property and improvements at any time owned, leased, used, operated, or occupied (whether for storage, disposal, or otherwise) by the Company, together with any and all appurtenant easements and beneficial rights thereto.

"**Company Registered Intellectual Property**" means all Registered Intellectual Property that is part of Company Intellectual Property.

"**Company Shareholders' Agreement**" means the Amended and Restated Shareholders' Agreement, dated as of March 31, 2004, as further amended on June 4, 2012, among the Company and the Stockholders party thereto, as may be further amended, restated, supplemented or modified.

"**Company Sites**" has the meaning set forth in Section 3.17(p).

"**Company Stockholders**" means the holders of Company Common Stock.

"**Company Technology**" means all Technology that is owned, purported to be owned (in each case whether owned singularly or jointly with a third party or parties), or filed by, assigned to or held in the name of, or exclusively licensed to, the Company.

"**Company Transaction Expenses**" has the meaning set forth in Section 9.9(a).

"**Consultant Proprietary Information Agreements**" has the meaning set forth in Section 3.17(k).

"**Contaminants**" has the meaning set forth in Section 3.17(s).

"**Contracts**" means any obligation, contract, agreement, commitment or arrangement, written or oral.

"**Contributor**" has the meaning set forth in Section 3.17(k).

"**Current Assets**" means the Company's collective (a) cash and cash equivalents; (b) accounts receivable (net of allowance for doubtful accounts), (c) inventories (net of reserve for obsolescence), (d) prepaid expenses and (e) other current assets, all determined in accordance with GAAP, as consistently applied by the Company, and in accordance with the guidelines identified in Schedule 2.6.

"**Current Liabilities**" means the Company's collective (a) accounts payable, (b) unearned revenues, and (c) accrued liabilities, including accrued payroll expenses, accrued liabilities for payroll, sales, use, employment, income and other Taxes, all determined in accordance with GAAP, as consistently applied by the Company, and in accordance with the guidelines identified in Schedule 2.6.

"**Customers**" has the meaning set forth in Section 3.25.

"**Damages**" has the meaning set forth in Section 8.2(a).

"**DGCL**" has the meaning set forth in the Recitals.

"**Direct Claim**" has the meaning set forth in Section 8.4(c).

"**Disputed Items**" has the meaning set forth in Section 2.6(b)(ii)

"**Dissenting Shares**" has the meaning set forth in Section 2.1(e).

"**Employee/Consultant**" has the meaning set forth in Section 3.12(a).

"**Employee Proprietary Information Agreements**" has the meaning set forth in Section 3.17(k).

"**Environmental Requirements**" means all federal, state, local and foreign statutes, regulations, ordinances, and similar provisions having the force or effect of Law, all judicial and administrative orders and determinations, and all common law concerning public health and safety, worker health and safety, pollution, or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any hazardous materials, substances, or wastes, chemical substances, or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, toxic molds, noise or radiation.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder, as amended.

"**ERISA Affiliate**" has the meaning set forth in Section 3.19(f).

"**Escrow Agent**" means JPMorgan Chase Bank, N.A. or its successor.

"**Escrow Agreement**" means the Escrow Agreement between Buyer, the Representative, the Company and the Escrow Agent, in substantially the form of Exhibit I attached hereto.

"**Escrow Amount**" has the meaning set forth in Section 2.3(a)(iii).

"**Escrow Fund**" means the General Escrow Fund or the Tax Escrow Fund, as applicable.

"**Estimated Adjustment Amount**" means a positive or negative amount equal to Estimated Closing Date Working Capital minus Target Working Capital.

"**Estimated Closing Date Working Capital**" has the meaning set forth in Section 2.6(a).

"**Estimated Merger Consideration**" means, collectively, the Closing Cash Payment, the Closing Cash in Lieu of Stock Payment and the Closing Buyer Stock Payment, the Escrow Amount and the Closing Third Party Payments.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Exchange Agent**" means JPMorgan Chase Bank, N.A. or its successor.

"**Exchange Fund**" has the meaning set forth in Section 2.3(a)(i).

"**First Delaware Certificate of Merger**" has the meaning set forth in Section 1.3.

"**First Merger**" has the meaning set forth in the Recitals.

"**First Merger Effective Time**" has the meaning set forth in Section 1.3.

"**First Texas Certificate of Merger**" has the meaning set forth in Section 1.3.

"**GAAP**" means United States generally accepted accounting principles as in effect from time to time.

"**General Escrow Fund**" means the balance of the General Escrow Amount held in a sub-account by the Escrow Agent pursuant to the Escrow Agreement.

"**Governmental Authority**" means any United States federal, state or local or foreign government or governmental, regulatory or administrative authority, department, agency, commission, entity or other political subdivision thereof or any court, tribunal, or judicial or arbitral body.

"**IBM**" means International Business Machines Corporation and its predecessor in interest, Q1 Labs.

"**IBM Fix**" means a minor correction to a software error or problem or an update, improvement, enhancement, adaptation or modification to software that does not materially alter the existing

functionality or add new functionality; in each case made by or for IBM and without the Company's involvement or by IBM together with the Company.

"**IBM Improvement**" means a correction to a software error or problem or an update, upgrade, improvement, substitute of components, enhancement, adaptation or modification other than an IBM Fix; in each case made by or for IBM and without the Company's involvement or by IBM together with the Company.

"**Indebtedness**" means with respect to any Person, to the extent the same would be required to be reflected on a balance sheet of such Person prepared in accordance with GAAP, (i) any liability, contingent or otherwise, of such Person (whether matured or unmatured) (A) for borrowed money (whether or not recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), (B) evidenced by a note, debenture or similar instrument (including a purchase money obligation) given in connection with the acquisition of any property or assets, (C) for any letter of credit, swap agreement or performance bond in favor of such Person, (D) for the payment of money relating to a capitalized lease obligation, (E) for any purchase price associated with any acquisition of assets or business (including any deferred purchase price, assumption of Indebtedness, non-competition payments or other forms of consideration), or (F) that would be classified as indebtedness on a balance sheet under the applicable method of accounting for the date or period represented; (ii) any liability of others of the kind described in the preceding clause (i), which the Person has guaranteed or which is otherwise its legal liability, contingent or otherwise; and (iii) any and all deferrals, renewals, extensions or refinancing of, or amendments, modifications of supplements to, any liability of the kind described in any of the preceding clauses (i) or (ii).

"**Indemnified Party**" has the meaning set forth in Section 8.4(a).

"**Indemnified Tax Statement**" has the meaning set forth in Section 5.11(a)(ii).

"**Indemnifying Party**" has the meaning set forth in Section 8.4(a).

"**Infringement**" or "**Infringe**" means that (or an assertion that) a given item or activity directly or indirectly infringes, misappropriates, dilutes, unfairly competes with, constitutes unfair trade practices, false advertising or unauthorized use of, or otherwise violates the Intellectual Property Rights of, any Person.

"**Intellectual Property**" means any and all Intellectual Property Rights and Technology.

"**Intellectual Property Rights**" means all intellectual property, industrial property, and proprietary rights worldwide, including rights in and to (i) patents, inventions, industrial designs and other governmental grants for the protection of inventions or industrial designs, including any patent applications, whether already filed or in preparation or contemplation of filing ("**Patents**"), (ii) copyrights and Moral Rights, (iii) rights of publicity and privacy and other rights to use the names, likeness, image, photograph, voice, identity and personal information of individuals, (iv) trade secrets, know-how and confidential information, (v) trademarks, trade names, logos, service marks, trade dress, designs, emblems, signs, insignia, slogans, other similar designations of source or origin and general intangibles of like nature, together with the goodwill of the Company or the Company's business symbolized by or associated with any of the foregoing ("**Trademarks**"), (v) domain names, hash tags and web addresses, (vi) databases, data compilations and collections, and customer and technical data, (vii) any registrations or applications for registration for any of the foregoing, including any provisionals, divisions, continuations, continuations-in-part, renewals, reissuances, re-examinations and extensions (as

applicable), (viii) analogous rights to those set forth above, and (ix) rights to sue for past, present, and future Infringement of the rights set forth above.

"**IRS**" has the meaning set forth in Section 3.10(j).

"**Joinder**" has the meaning set forth in Section 2.4(a).

"**Knowledge**" of (i) the Company means the actual knowledge of Eva Bunker, Nelson Bunker, Kevin Mitchell, Jesper Jurcenoks and Sheryl Stembridge, or the knowledge that such person could have obtained following reasonable inquiries to those Company employees who report directly to him or her, and (ii) Buyer means the actual knowledge of Gray Hall and Paul Marvin, or the knowledge that such person could have obtained following reasonable inquiries to those Buyer employees who report directly to him.

"**Law**" means any domestic, federal, state or local law, statute, ordinance, rule, regulation, administrative interpretation, guideline, order, injunction, writ, decree or other requirement of any Governmental Authority.

"**Leased Real Property**" has the meaning set forth in Section 3.16.

"**Liabilities**" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any Laws and those arising under any contract, agreement, arrangement, commitment or undertaking.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, claim, security interest or other encumbrance in respect of such asset.

"**Material Contract**" has the meaning set forth in Section 3.22(b).

"**Merger**" has the meaning set forth in the Recitals.

"**Mergers**" has the meaning set forth in the Recitals.

"**Merger Consideration**" means the Estimated Merger Consideration plus or minus any Working Capital Excess or Working Capital Shortfall, as the case may be.

"**Merger Sub (LLC)**" has the meaning set forth in the Preamble.

"**Merger Sub (Corp)**" has the meaning set forth in the Preamble.

"**Merger Subs**" has the meaning set forth in the Preamble.

"**Moral Rights**" means moral or equivalent rights in any Intellectual Property, including the right to the integrity of the work, the right to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

"**Nondisclosure Agreement**" has the meaning set forth in Section 5.7.

"**Objection Notice**" has the meaning set forth in Section 2.6(b)(ii).

"**Open Source Software**" means any Software that is licensed, distributed or conveyed as "open source software", "free software", "copyleft" or under a similar licensing or distribution model, or under a Contract that requires as a condition of its use, modification or distribution that it, or other Software into which such Software is incorporated, integrated or with which such Software is combined or distributed or that is derived from or linked to such Software, be disclosed or distributed in source code form, delivered at no charge or be licensed, distributed or conveyed under the same terms as such Contract (including Software licensed under the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, Microsoft Shared Source License, Common Public License, Artistic License, Netscape Public License, Sun Community Source License (SCSL), Sun Industry Standards License (SISL), Apache License and any license listed at www.opensource.org).

"**Option**" shall mean each option to purchase or acquire Company Common Stock, whether issued by the Company pursuant to the Option Plan or otherwise.

"**Option Plan**" means the Company's 2000 Omnibus Stock and Incentive Plan.

"**Order**" means any order, judgment, injunction, award, decree or writ of any Governmental Authority.

"**Ordinary Course of Business**" means the ordinary and usual course of normal day-to-day operations of the Company (or the Buyer), through the date of this Agreement consistent with past practice.

"**Parties**" means Company, Buyer, the Merger Subs and the Representative.

"**Pay-Off Letters**" has the meaning set forth in Section 2.7.

"**Permitted Liens**" means: (i) Liens for Taxes, assessments or other governmental charges or levies that are not yet due or payable; (ii) Liens for Taxes, assessments or other governmental charges or levies that are being contested in good faith by appropriate proceedings and are reflected in the reserve for Tax liabilities or otherwise shown on the face of the Company Last Balance Sheet; (iii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, repairmen and other Liens imposed by statute, in each case for sums and obligations not yet overdue; and (iv) Liens incurred or deposits made in connection with worker's compensation, unemployment insurance or other types of social security.

"**Person**" means any natural person, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or Governmental Authority.

"**Personally Identifiable Information**" means any information that alone or in combination with other information held by the Company can be used to specifically identify a Person or a specific device.

"**Plan**" has the meaning set forth in Section 3.19(a).

"**Policy**" has the meaning set forth in Section 3.21.

"**Pre-Closing Period**" has the meaning set forth in Section 5.1.

"**Pre-Closing Tax Period**" means (i) any taxable period of the Company ending on or prior to the Closing Date, except solely for federal income tax purposes (and state and local income tax purposes to the extent such state and local tax Laws have provisions similar to Code Sections 1362(d)(2)(B) and 1362(e)(1)(A) and Treasury Regulation § 1.1502-76(b)((1)(ii)(A)(2)) the Tax period ending on the day before the Closing Date, or (ii) the portion of a taxable period commencing prior to and ending after the Closing Date, which ends on the Closing Date.

"**Pro Rata Share**" means the percentage interest next to each Company Party's name on Schedule 3.6(a).

"**Qualified Plan**" has the meaning set forth in Section 3.19(c).

"**Recommendation**" has the meaning set forth in Section 5.4(b).

"**Recurring Revenue Shortfall**" has the meaning set forth in Section 8.2(b).

"**Registered Intellectual Property**" shall mean Intellectual Property that has been registered, filed, certified or otherwise perfected or recorded with or by any Governmental Authority or quasi-public legal authority (including domain name registrars), or any applications for any of the foregoing.

"**Related Person**" means, with respect to any Person: (i) the spouses, children and other lineal descendants and any other member of the immediate family, as defined in Rule 16a-1 under the Exchange Act, of such Person; (ii) any corporation, partnership, joint venture or other person, entity or enterprise owned or controlled by such Person or by any Related Person of such Person; and (iii) any trust of which such Person or member of the immediate family of such Person is a grantor or beneficiary.

"**Release**" means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment, whether intentional or unintentional.

"**Release Date**" has the meaning set forth in Section 8.1.

"**Repository**" means the software code repository provided by the Company that is a subversion software version and revision control system and which allows both IBM and the Company to access and modify certain software.

"**Representative**" has the meaning set forth in the Preamble.

"**Represented Parties**" has the meaning set forth in Section 9.12(a).

"**Represented Party**" has the meaning set forth in Section 9.12(a).

"**Required Stockholder Approval**" has the meaning set forth in the Recitals.

"**S Corporation**" has the meaning set forth in Section 3.10(o).

"**Sales Tax**" means any sales Tax, use Tax or similar Tax (for the avoidance of doubt, including any interest, penalties, additions to tax or additional amounts thereon) imposed on or payable by the Company for any Pre-Closing Tax Period.

"**Second Delaware Certificate of Merger**" has the meaning set forth in Section 1.3.

"**Second Merger**" has the meaning set forth in the Recitals.

"**Second Merger Effective Time**" has the meaning set forth in Section 1.3.

"**Second Texas Certificate of Merger**" has the meaning set forth in Section 1.3.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Shrink-Wrap Code**" means any generally commercially available software in executable code form (other than development tools and development environments) that is available for a cost of not more than $5,000 for a perpetual license for a single user or workstation (or $50,000 in the aggregate for all users and work stations).

"**Software**" means software, firmware and computer programs and applications (including source code, executable or object code, architecture, algorithms, data files, computerized databases, plugins, libraries, subroutines, tools and APIs) and related documentation.

"**Specified Representations**" means the representations and warranties set forth in Section 3.1 (Organization and Qualification of the Company), Section 3.2 (Authority and Validity), Section 3.5 (Consents and Approvals), Section 3.6 (Capitalization), Section 3.10 (Taxes), Section 3.19 (Employee Benefit Plans), and Section 3.26 (Finders Fees).

"**Standard Form Agreements**" has the meaning set forth in Section 3.17(f).

"**Stockholder Information Statement**" has the meaning set forth in Section 5.4(a).

"**Stockholders**" means all of the stockholders of the Company.

"**Subsidiary(ies)**" means any Person of which the Company (either alone or together with other Subsidiaries of the Company), directly or indirectly, owns or controls any interest.

"**Suppliers**" has the meaning set forth in Section 3.24.

"**Surrender Agreement**" means the option cash-out agreement and release in substantially the form attached as Exhibit J.

"**Surviving Company**" has the meaning set forth in the Recitals.

"**Target Amount**" means $1,500,000.

"**Target Working Capital**" shall mean negative One Hundred Twenty-Eight Thousand Dollars ($-128,000).

"**Tax Escrow Fund**" means the balance of the Sales Tax Escrow Amount held in a sub-account by the Escrow Agent pursuant to the Escrow Agreement.

"**Taxes**" means, with respect to any Person, all U.S. federal, state or local or any foreign taxes, charges, fees, customs, duties, levies or other assessments including income taxes (including any tax on or based upon net income, gross income, or income as specially defined, or earnings, profits, or selected items of income, earnings or profits), gross receipts, real and personal property, estimated, severance, occupation, production, capital gains, capital stock, goods and services, environmental, stamp, value-added, social security (or similar), unemployment insurance, sales, use, regulatory, excise, luxury,

privilege, commerce, operational, ad valorem, transfer, franchise, license, withholding, payroll, employment, alternative or add-on minimum, unclaimed property, escheat or similar obligations, imposed by any Taxing Authority, whether disputed or not, together with any interest, penalties, additions to tax or additional amounts imposed on such Person with respect to the foregoing items.

"**Tax Arbitrator**" has the meaning set forth in Section 5.11(a)(iii).

"**Tax Return**" means any return (including any information return), report, statement, schedule, notice, form, or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection or payment of Taxes or in connection with the administration, implementation, or enforcement of or compliance with any applicable Law relating to Taxes.

"**Tax Statement Dispute**" has the meaning set forth in Section 5.11(a)(iii).

"**Taxing Authority**" shall mean any Governmental Authority responsible for the imposition, assessment, determination, collection or administration of any Tax, or the review or audit of any Tax Return.

"**TBOC**" has the meaning set forth in the Recitals.

"**Technology**" means (i) Software, (ii) inventions (whether or not patentable), discoveries and improvements, (iii) proprietary and confidential information, trade secrets and know how, (iv) databases, data compilations and collections, and customer and technical data, (v) methods and processes, (vi) devices, prototypes, designs and schematics, and (vii) tangible items related to, constituting, disclosing or embodying any or all of the foregoing, including all versions thereof.

"**Third Party Claim**" means any claim, demand, action, suit, or proceeding made or brought by any Person who or that is not a party to this Agreement.

"**Total Revenues**" means the sum of Annualized Recurring Revenue and Buyer Revenue.

"**Transaction Document**" means any agreement, certificate, instrument or other document executed by the Company and/or Buyer or any Merger Sub pursuant to this Agreement.

"**User Documentation**" shall mean explanatory and informational materials concerning the Company Products, in printed or electronic form, which the Company has released for distribution to end users with such Company Products, which may include manuals, descriptions, user or installation instructions, diagrams, printouts, listings, flow-charts and training materials, contained on visual media such as paper or photographic film, or on other physical storage media in machine readable form.

"**Vested Company Options**" means each Company Option that is outstanding, unexercised and vested (after giving effect to any applicable acceleration of vesting) as of immediately prior to the First Merger Effective Time.

"**Warrant**" shall mean each warrant or other contractual right to purchase or acquire Company Stock, provided that Options and Company Preferred Stock shall not be considered Warrants.

"**Working Capital**" means an amount equal to Current Assets less Current Liabilities.

"**Working Capital Excess**" shall have the meaning set forth in Section 2.6(c).

"**Working Capital Shortfall**" shall have the meaning set forth in Section 2.6(c).

Schedule 3.17(b)

Intellectual Property

(i)

Registered Trademarks

Identify	Date of registration	Registration Number	Status	Country
Critical Watch®	07/30/13	4374816	Type of Mark: TRADEMARK. SERVICE MARK Register: PRINCIPAL Live/Dead Indicator: LIVE	US
FusionVM®	04/24/2007	3232905	Type of Mark: TRADEMARK. SERVICE MARK Register: PRINCIPAL Affidavit Text: SECT 15. SECT 8 (6-YR). Live/Dead Indicator: LIVE	US
ACI Platform®	02/12/2013	4289191	Type of Mark: TRADEMARK. SERVICE MARK Register: PRINCIPAL Live/Dead Indicator: LIVE	US
ACI Recommendation Engine®	08/20/2013	4386849	Type of Mark: TRADEMARK. SERVICE MARK Register: PRINCIPAL Live/Dead Indicator: LIVE	US
Basecamp Labs®	05/28/2013	4341783	Type of Mark: TRADEMARK. SERVICE MARK Register: PRINCIPAL Live/Dead Indicator: LIVE	US

Examples of specific usages with products or common use marks

FusionVM® SaaS

FusionVM® Enterprise

FusionVM® MSSP

FusionVM® PCI

IPS Optimizer™

Countermeasure Inspector™

FusionPCI™

FusionPCIez™

Patents

Title	Number	Date of registration	Country
Network security testing	Patent No.: US 7,325,252 B2 Publication No. 20030009696 Application No. 10/043,654	01/29/2008 1/9/2003 1/10/2002	US
Security countermeasure management platform	Patent No.: US 8,800,045 B2 Publication No.: 20120210434 Application No..: 13/371,405	08/05/2014 08/16/2012 02/11/2011	US

Security countermeasure management platform	Publication No.: 20140344940 Application No..: 14/450,509	08/16/2012 11/20/2014 8/4/2014	US
System and method for selecting and applying filters for intrusion protection system within a vulnerability management system	Patent No.: US 8881272 Publication No.: 20100242114 Application No,.: 12/726,492	11/04/2014 9/23/2010 03/18/2010	US

Domain Names

fusionvm.com

criticalwatch.org

criticalwatch.net

criticalwatch.com

achillesguard.com

fusionpci.com

fusionpciez.com

(ii)

The Company Products identified on Schedule 3.17(a)(i)

Name / Title	Description
ACI Platform®: IPS Optimizer™	IPS and Next Gen IPS tuning solution based on network vulnerability data input from various vulnerability assessment scanning technologies (Qualysguard, Rapid7, McAfee, Nessus and FusionVM). Includes intelligent workflow and change control master IPS controller (SMS).
ACI Platform®: Countermeasure Inspector™	Countermeasure Inspector™ is a security analytics tool that helps you establish a more effective layered defense posture by comparing your environment's risk

	data to your installed countermeasures and to those you might be considering.
ACI Platform®: Research GUI – (Alchemy) – Industry standards correlation	Research tagging engine and Gui Using C# like scripting language define and apply tags to industry standard like Mitre's: CVE/CWE/CPE/CAPEC. Create "research package" for regular updates of the ACI platform
Basecamp Labs®: List manager	List manager/processor for population, tagging, signature mappings and approvals of exposures/vulnerability descriptions, News stories and advisories.
Basecamp Labs®: Autobots	Autobots, scripting tool for aggregation of vendor data/news/alerts (feeds Basecamp Labs List Manager)
FusionVM® Scanning Engine	Core scanning engine
FusionVM® CEM	Collaborative Execution Map – hierarchical system to create and manage roles, groups, assets and environments with inherited and customized access and privileges.
FusionVM® Early Warning Alert system	Reporting and alert module that analyzes new vulnerability additions to the FusionVM library against existing/completed scan jobs. If new vulnerabilities are mapped to existing scans, alerts will be included in a report and users can be notified immediately. Reports news vulnerabilities between scans.
ACI Platform®: SOAP API Generator	This mechanism interrogates a catalog of stored procedures based on a user role (permission) and generates C# SOAP proxy code that is ultimately calls the underlying stored procedure. A database programmer creates a new stored procedure, commits the code to the build repository and all necessary C# code to SOAP enable the endpoint based on this stored procedure is generated by the tool during build time.
FusionVM® OVAL interpreter	Proprietary implementation of an OVAL interpreter – with the following key features: □ remote access evaluations □ multiple sources of OVAL definitions □ local Oval extensions for better assessment
PCI Resolution & Collaboration Console	Interface and console that allows "one to many" collaboration with users preparing for or trying to attain PCI certification. Allows for itemized issue/dispute workflow between user and PCI agent.
PCI SAQ (automated self-assessment questionnaire)	Web based "wizard" version of PCI Paper based Self-Assessment Questionnaire (SAQ). Keeps track of progress, enforces valid answers and creates appropriate cross-references for final reporting to Card Acquirers. The CW SAQ is data driven and new versions of PCI SAQ can be easily added by uploading a new set of data. Can be seamlessly integrated into FusionPCI™ and FusionPCIez™ offerings or offered as a standalone product for franchise companies and payment processors.
FusionVM® PCI: Single URL PCI Scanning	Mechanism for a business to obtain a PCI compliance report by simply entering two pieces of information: 1) website URL that processes credit card payments 2) email address. The system is fully self-service and guides the user throughout all aspects of the PCI report process.
FusionVM® CVE/CPE data	Exposure/vulnerability descriptions, classifications, ratings, remediation steps, custom CPEs, CVE mapping, advisory mappings, curated news stories..."our research content."
ACI Platform®	Extensible platform for receiving data and orchestrating actions across multiple disparate risk input sources and countermeasure solutions. (all the parts of ACI Platform not covered by patent)
OWASP > CWE > WAF Mapping	Mapping and settings library of OWASP to CWE to WAF for FortiWeb, F5 WAF and Radware.
Proprietary Countermeasure prioritization algorithms and systems	

(iii)

None.

(iv)

Reference is hereby made to Schedules 3.13 and 3.17(g), such information referenced therein being incorporated herein.

Schedule 3.17(d)

Title to Intellectual Property

Third Party Ownership

All Third Party software identified in Schedule 3.17(a)(ii) that is incorporated into a Company Product is owned by the respective third party.

All material licensed to the Company pursuant to the licenses set forth in Schedule 3.17(e) or 3.17(n) and incorporated into a Company Product, other Software or other Company Intellectual Property is owned by the respective licensor.

(i)

None.

(ii)

None.

Schedule 3.17(e)

Third Party Intellectual Property

Nmap Technology License Agreement

Consulting edition license of Acunetix

Bundled OEM License Agreement (Trend Micro)

IBM Software and Source Code License Agreement

Trend Micro Bundled OEM License Agreement dated May 1, 2014

Vulnerability Management Reseller Master Agreement with netVigilance dated January 1, 2014 (including amendments thereto dated March 10, 2014, June 5, 2014 and December 17, 2014)