

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT3946515

SUBMISSION TYPE:	NEW ASSIGNMENT	
NATURE OF CONVEYANCE:	SECURITY INTEREST	
CONVEYING PARTY DATA		
	Name	Execution Date
	WETPAINT.COM, INC.	02/10/2016
RECEIVING PARTY DATA		
Name:	SILLERMAN INVESTMENT COMPANY III, LLC	
Street Address:	902 BROADWAY, 11TH FLOOR	
City:	NEW YORK	
State/Country:	NEW YORK	
Postal Code:	10010	
PROPERTY NUMBERS Total: 7		
Property Type	Number	
Patent Number:	8762472	
Patent Number:	8984082	
Patent Number:	8612375	
Patent Number:	8706673	
Patent Number:	9197512	
Patent Number:	8812608	
Patent Number:	8977701	
CORRESPONDENCE DATA		
Fax Number:	(206)381-3301	
<i>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.</i>		
Phone:	(206) 381-3300	
Email:	patentdocketing@lowegrahamjones.com	
Correspondent Name:	JOHN W. BRANCH	
Address Line 1:	701 FIFTH AVENUE SUITE 4800	
Address Line 2:	LOWE GRAHAM JONES PLLC	
Address Line 4:	SEATTLE, WASHINGTON 98104	
ATTORNEY DOCKET NUMBER:	WETP-5-1000	
NAME OF SUBMITTER:	DANIEL OGAMI	
SIGNATURE:	/daniel ogami/	
DATE SIGNED:	07/01/2016	

PATENT

Total Attachments: 127

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SECURITY AGREEMENT

This SECURITY AGREEMENT, effective as of December 30, 2015 (as amended, restated or otherwise modified from time to time, this "Agreement") made by DraftDay Fantasy Sports, Inc. (formerly known as Viggie Inc.), a Delaware corporation (the "Company" or the "Grantor"), in favor of Sillerman Investment Company III, LLC (the "Secured Party").

RECITALS

WHEREAS, the Company and the Secured Party are parties to that certain Line of Credit Grid Promissory Note dated October 24, 2014 between the Company as borrower and the Secured Party as Lender (the "Note"); and

WHEREAS, under the Note, the Secured Party had the right to consent to transactions involving the incurrence of indebtedness, changes in the nature of the Company's business, transfers of material technology or intellectual property assets and strategic relationships involving the payment of \$1,000,000 or more; and

WHEREAS, in connection with the sale of certain Company assets (the "Asset Sale") to Perk.com, Inc. ("Perk"), the Secured Party's consent was required because the Asset Sale involved the foregoing; and

WHEREAS, prior to the Company's entering into the Asset Sale, the Secured Party consented thereto; and waived its right to claim that the Asset Sale is an event of default under the Note; and

WHEREAS, in consideration of such consent, and in consideration of the Secured Party's agreement to subordinate the Note to amounts owing to Perk, the Company agreed to provide a subordinated security interest in all of the Company's assets to the Secured Party in respect of the amounts outstanding under the Note; and

WHEREAS, the Grantor has determined that the execution, delivery and performance of this Agreement directly benefits, and is in the best interest of, the Grantor.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Secured Party to perform its obligations under the Note, the Grantor agrees with the Secured Party, as follows:

SECTION 1. Definitions.

(a) Reference is hereby made to the Note for a statement of the terms thereof. All terms used in this Agreement and the recitals hereto which are defined in the Note or in Articles 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of Delaware or such other applicable jurisdiction (the "Code"), and which are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein which are

defined in the Code as in effect in the State of Delaware on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute.

(b) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

“Capital Stock” means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, and (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

“Copyright Licenses” means all written licenses, contracts or other agreements naming the Grantor as licensee or licensor and providing for the grant of any right to use or sell any works covered by any copyright.

“Copyrights” means all domestic and foreign copyrights, whether registered or not, including, without limitation, all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship fixed in any tangible medium of expression, acquired or used by the Grantor, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

“Event of Default” shall have the meaning set forth in the Note.

“Intellectual Property” means the Copyrights, Trademarks and Patents.

“Licenses” means the Copyright Licenses, the Trademark Licenses and the Patent Licenses.

“Lien” means any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights).

“Patent Licenses” means all written licenses, contracts or other agreements naming the Grantor as licensee or licensor and providing for the grant of any right to manufacture, use or sell any invention covered by any Patent.

“Patents” means all domestic and foreign letters patent, design patents, utility patents, industrial designs, inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how, formulae, rights of publicity and other general intangibles of like nature, now existing or hereafter acquired, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office, or in any similar office or agency of the United States or any other country or any political

subdivision thereof), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

"Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or governmental authority.

"Pledged Companies" means each direct Subsidiary of the Company that has issued Pledged Interests.

"Pledged Interests" means all of the Grantor's right, title and interest in and to all of the Capital Stock now or hereafter owned by such Grantor, regardless of class or designation, including all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including any certificates representing the Capital Stock, the right to receive any certificates representing any of the Capital Stock, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof, and the right to receive dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing.

"Pledged Operating Agreements" means all of the Grantor's rights, powers, and remedies under the limited liability company operating agreements of each of the Pledged Companies that are limited liability companies, as may be amended, restated, supplemented, or otherwise modified from time to time.

"Pledged Partnership Agreements" means all of the Grantor's rights, powers, and remedies under the partnership agreements of each of the Pledged Companies that are partnerships, as may be amended, restated, supplemented, or otherwise modified from time to time.

"Trademark Licenses" means all written licenses, contracts or other agreements naming the Grantor as licensor or licensee and providing for the grant of any right concerning any Trademark, together with any goodwill connected with and symbolized by any such trademark licenses, contracts or agreements and the right to prepare for sale or lease and sell or lease any and all Inventory now or hereafter owned by the Grantor and now or hereafter covered by such licenses.

"Trademarks" means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a's, Internet domain names, trade styles, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, acquired or used by the Grantor, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by such marks and all customer lists,

formulae and other Records of the Grantor relating to the distribution of products and services in connection with which any of such marks are used.

SECTION 2. Grant of Security Interest. As collateral security for all of the "Obligations" (as defined in Section 3 hereof), the Grantor hereby pledges and assigns to the Secured Party, and grants to the Secured Party a continuing security interest in, all of the following personal property and assets of the Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible (collectively, the "Collateral"), including, without limitation, the following:

- (a) all Accounts;
- (b) all Chattel Paper (whether tangible or electronic);
- (c) all Documents;
- (d) all Equipment;
- (e) all Fixtures;
- (f) all General Intangibles (including, without limitation, all Payment Intangibles);
- (g) all Goods;
- (h) all Instruments (including, without limitation, Promissory Notes and each certificated Security);
- (i) all Inventory;
- (j) all Investment Property (and, regardless of whether classified as Investment Property under the Code, all Pledged Interests, Pledged Operating Agreements and Pledged Partnership Agreements);
- (k) all Copyrights, Patents and Trademarks, and all Licenses;
- (l) all Letter-of-Credit Rights;
- (m) all Supporting Obligations; and
- (n) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case, howsoever the Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise). Notwithstanding anything herein to the contrary, the security interest created by this Agreement, and the term "Collateral," shall expressly exclude any Capital Stock of (a) any foreign Subsidiary (except for Capital Stock consisting of more than 65% of the voting power of all classes of Capital Stock entitled to vote of any first-tier foreign Subsidiary) and (b) DraftDay Gaming Group, Inc.; provided, in each case, that Collateral shall include all

Proceeds, including all Cash Proceeds and Noncash Proceeds, thereof. Notwithstanding anything herein to the contrary, the security interest created by this Agreement shall not extend to, and the term "Collateral" shall not include, (a) any lease, license, contract, property rights or agreement to which the Grantor is a party (or to any of its rights or interests thereunder) if the grant of such security interest would constitute or result in either (i) the abandonment, invalidation or unenforceability of any right, title or interest of the Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement; (b) any Intellectual Property registrations owned and applications for Intellectual Property registrations to be owned, jointly by the Grantor and a Person other than the Grantor, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof and all other rights whatsoever accruing thereunder or pertaining thereto; (c) assets owned by the Grantor on the date hereof or hereafter acquired that are subject to a Lien if the contract or other agreement in which such Lien is granted (or the documentation providing for such Lien) validly prohibits the creation of any other Lien on such assets; (d) any intent-to-use Trademark application to the extent and for so long as creation by the Grantor of a security interest therein would result in the loss by the Grantor of any material rights therein; and (e) in the case of any Collateral that consists of general or limited partnership interests in a general or limited partnership, the security interest hereunder shall be deemed to be created only to the maximum extent permitted under the applicable organizational instrument pursuant to which such partnership is formed; and in no event shall the Grantor be required to take any actions to perfect the security interest in any of its assets (including Intellectual Property) located outside the United States. The Grantor hereby irrevocably authorizes the Secured Party and its counsel and other representatives, at any time and from time to time, to file or record financing statements, amendments to financing statements, and, with notice to the Grantor, other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Secured Party determines appropriate to perfect the security interests created under this Agreement, and such financing statements and amendments to financing statements may describe the Collateral covered thereby as "all assets of debtor, whether now existing or hereafter acquired, together with all proceeds thereof" or words of similar effect.

SECTION 3. Security for Obligations. The security interest created hereby in the Collateral constitutes continuing collateral security for, so long as the Note is outstanding, (i) the payment by the Company, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it under the Note, and (ii) the payment by the Company, as and when due and payable, of the Termination Fee under Section 11.3(a) of the Asset Purchase Agreement (clauses (i) and (ii) are collectively referred to herein as the "Obligations").

SECTION 4. Representations and Warranties. The Grantor represents and warrants as of the date of this Agreement as follows:

(a) Schedule I hereto sets forth (i) the exact legal name of the Grantor, and (ii) the state of incorporation, organization or formation and the organizational identification number of the Grantor in such state.

(b) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body, is required for the grant by the Grantor

of the security interest purported to be created hereby in the Collateral, except (A) for the filing under the Code as in effect in the applicable jurisdiction of the financing statements described in Schedule II hereto, all of which financing statements have been or will be duly filed and are or will be in full force and effect, (B) with respect to Commodity Contracts, for the execution of a control agreement with the commodity intermediary with which such commodity contract is carried, (C) with respect to the perfection of the security interest created hereby in the United States Intellectual Property and Licenses, for the recording of an appropriate Assignment for Security, substantially in the form of Exhibit A hereto in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, (D) with respect to the perfection of the security interest created hereby in foreign Intellectual Property and Licenses, for registrations and filings in jurisdictions located outside of the United States and covering rights in such jurisdictions relating to such foreign Intellectual Property and Licenses, (E) with respect to the perfection of the security interest created hereby in any Letter-of-Credit Rights, for the consent of the issuer of the applicable letter of credit to the assignment of proceeds as provided in the Code as in effect in the applicable jurisdiction, (F) with respect to any action that may be necessary to obtain control of Collateral constituting Commodity Contracts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights, the taking of such actions, and (G) the Secured Party having possession of all Documents, Chattel Paper, Instruments and cash constituting Collateral.

(c) This Agreement creates in favor of the Secured Party a valid and enforceable security interest in the Collateral, as security for the Obligations (except to the extent that enforcement may be affected by laws relating to bankruptcy, reorganization, insolvency and creditors' rights and by the availability of injunctive relief, specific performance and other equitable remedies).

(d) The Grantor has delivered to the Secured Party all Collateral constituting Certificated Securities and Instruments along with blank endorsements thereof.

(e) The Grantor does not have any Commercial Tort Claim for an alleged claim in excess of \$100,000.

SECTION 5. Covenants as to the Collateral. So long as any of the Obligations shall remain outstanding, unless the Secured Party shall otherwise consent in writing:

(a) Further Assurances. The Grantor shall at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that the Secured Party may reasonably request in order to: (i) perfect and protect the security interest purported to be created hereby; or (ii) enable the Secured Party to exercise and enforce its rights and remedies hereunder in respect of the Collateral.

(b) Insurance. The Grantor shall, at its own expense, maintain insurance (including, without limitation, commercial general liability and property insurance) with respect to the Equipment and Inventory in such amounts, against such risks, in such form and with responsible and reputable insurance companies or associations as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated. To the extent requested by the Secured Party at any time and from time to time, each such policy shall name the

Secured Party as an additional insured party and/or loss payee, as applicable, thereunder (without any representation or warranty by or obligation upon the Secured Party) as its interests may appear. The Grantor shall, if so requested by the Secured Party, deliver to the Secured Party original or duplicate policies of such insurance and, as often as the Secured Party may reasonably request, a report of a reputable insurance broker with respect to such insurance.

(c) Provisions Concerning the Accounts and the Licenses. The Grantor shall give the Secured Party at least 5 days' prior written notice of any change in the Grantor's name, identity, organizational structure or jurisdiction of incorporation, organization or formation.

(d) Intellectual Property. If applicable, the Grantor shall duly execute and deliver the applicable Assignment for Security in the form attached hereto as Exhibit A. The Grantor (either itself or through licensees) shall take all action necessary to maintain all of the material Intellectual Property in full force and effect, and the Grantor shall not do any act or knowingly omit to do any act whereby any material Intellectual Property may become invalidated; provided, however, the Grantor shall have no obligation to use or to maintain any Intellectual Property (i) that Grantor determines in its reasonable discretion that such application or registration of such Intellectual Property is no longer material or useful to its business or operations, or that pursuit or maintenance of such application or registration is no longer reasonable, prudent or beneficial to Grantor or its operations, (ii) that relates solely to any product or work, that has been, or is in the process of being, discontinued, abandoned or terminated, (iii) that is being replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the Lien created by this Agreement or (iv) that is substantially the same as another Intellectual Property that is in full force, so long the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such other Intellectual Property is subject to the Lien and security interest created by this Agreement. The Grantor shall furnish to the Secured Party from time to time upon its reasonable (but not more frequently than on a quarterly basis) request statements and schedules identifying and describing the material Intellectual Property and material Licenses in connection with the Intellectual Property and Licenses, all in reasonable detail and promptly upon request of the Secured Party.

(e) Notices of Additional Collateral. Grantor shall promptly notify the Secured Party upon acquiring any Collateral constituting Certificated Securities, Instruments, Uncertificated Securities, Securities Accounts, Securities Entitlements, Commodities Accounts, Electronic Chattel Paper, Letter-of-Credit Rights or Commercial Tort Claims.

(f) Additional Perfection Steps with respect to Certificated Securities and Instruments. Grantor shall take all actions necessary to: (i) establish the Secured Party's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Collateral constituting Certificated Securities; and (ii) deliver any portion of the Collateral constituting Instruments to the Secured Party along with blank endorsements thereof.

(g) Additional Perfection Steps with respect to Certain other Collateral. If an Event of Default occurs and is continuing, Grantor shall, upon the Secured Party's request, (i)

establish the Secured Party's "control" (within the meanings of Section 9-106 of the UCC) over any portion of the Collateral constituting Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts; (ii) upon the Secured Party's request, establish the Secured Party's "control" (within the meanings of Section 9-105 of the UCC) over any portion of the Collateral constituting Electronic Chattel Paper; and (iii) upon Secured Party's request, establish the Secured Party's "control" (within the meanings of Section 9-107 of the UCC) over any portion of the Collateral constituting Letter-of-Credit Rights.

(h) Commercial Tort Claims. Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim for an alleged claim in excess of \$100,000 hereafter arising, it shall notify the Secured Party in writing and deliver updated applicable schedules, identifying such new Commercial Tort Claims.

SECTION 6. Remedies Upon Event of Default. If any Event of Default shall have occurred and be continuing upon prior written notice to the Company:

(a) The Secured Party may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (A) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Secured Party may deem commercially reasonable and/or (B) lease, license or dispose of the Collateral or any part thereof upon such terms as the Secured Party may deem commercially reasonable. The Grantor agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least ten (10) days' notice to the Grantor of the time and place of any public sale or the time after which any private sale or other disposition of its respective Collateral is to be made shall constitute reasonable notification. The Secured Party shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Grantor hereby acknowledges that (i) any such sale of its respective Collateral by the Secured Party shall be made without warranty, (ii) the Secured Party may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (iii) such actions set forth in clauses (i) and (ii) above shall not adversely affect the commercial reasonableness of any such sale of Collateral.

(b) Any cash held by the Secured Party as Collateral and all Cash Proceeds received by the Secured Party in respect of any sale of or collection from, or other realization upon, all or any part of the Collateral shall be applied by the Secured Party against all or any part of the Obligations in such order as the Secured Party shall elect. Any surplus of such cash or Cash Proceeds held by the Secured Party and remaining after the satisfaction in full of all of the Obligations shall be paid over to the Company or to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(c) In the event that the proceeds of any such sale, collection or realization are insufficient to pay all amounts to which the Secured Party is legally entitled, the Grantor shall be liable for the deficiency, together with interest thereon at the highest rate specified in the Note for interest on overdue principal thereof or such other rate as shall be fixed by applicable law, together

with the costs of collection and the reasonable fees, costs, expenses and other client charges of any attorneys employed by the Secured Party to collect such deficiency.

(d) The Secured Party may perform any and all of its duties and exercise its rights and powers hereunder by or through, or delegate any and all such rights and powers to, any one or more agents appointed by the Secured Party. The indemnification provisions of Article 10 of the Note shall apply to any such agent to the same extent it applies to the Lender.

SECTION 7. Notices, Etc. All notices and other communications provided for hereunder (a) shall be given in the form and manner set forth in the Note and (b) shall be delivered (i) in the case of notice or other communications to the Grantor, by delivery of such notice to the Company to its address, facsimile number or e-mail address specified in the Note or at such other address, facsimile number or e-mail address as shall be designated by the Company in a written notice to the Secured Party in accordance with the provisions thereof or (ii) in the case of notice or other communications to the Secured Party, by delivery of such notice to the Secured Party to its address, facsimile number or e-mail address set forth below or at such other address as shall be designated by the Secured Party in a written notice to the Company.

If to the Grantor:

DraftDay Fantasy Sports, Inc.
902 Broadway, 11th Floor, New York, New York 10010
Attention: General Counsel
Telephone: 212-231-0092
Facsimile: 646-417-7393
E-mail: tom@viggle.com

with a copy to:

Greenberg Traurig
200 Park Avenue, New York, New York 10166
Attention: Dennis Block
Telephone: 212-801-2222
Facsimile: 212-805-5555
E-mail: blockd@gtlaw.com

If to the Secured Party:

Sillerman Investment Company III, LLC
902 Broadway, 14th Floor, New York, New York 10010
Attention: Robert F.X. Sillerman
Telephone: 646-561-6388
Facsimile: 646-417-7393
E-mail: carol@sfxii.com

SECTION 8. Miscellaneous.

(a) Upon satisfaction in full of the Obligations, (i) this Agreement and the security interests created hereby shall automatically terminate and all rights to the Collateral shall revert to the Grantor, and (ii) the Secured Party shall, upon the Grantor's request and at the Grantor's expense, (A) return to the Grantor such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof, and (B) execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

(b) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Grantor irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the State of Delaware for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Grantor hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(c) This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

(d) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that

would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(e) Headings used in this Agreement are for convenience only and shall not be used in connection with the interpretation of any provision hereof.

(f) The pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto.

(g) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. For clarification purposes, the Recitals are part of this Agreement.

(h) Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein).


(i) THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE PARTIES SOLELY WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. No provision of this Agreement may be amended other than by an instrument in writing signed by the Grantor and the Secured Party. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized on this 10th day of February, 2016.

COMPANY:

DRAFTDAY FANTASY SPORTS, INC.

By: 
Name: Tom McLean
Title: General Counsel

ACCEPTED BY:

SILLERMAN INVESTMENT
COMPANY III, LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized on this 10th day of February, 2016.

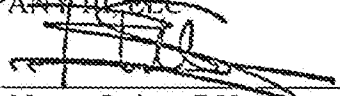
COMPANY:

DRAFTDAY FANTASY SPORTS, INC.

By: _____
Name:
Title:

ACCEPTED BY:

SILLERMAN INVESTMENT
COMPANY III, LLC

By:  _____
Name: Robert F.X. Sillerman
Title:

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): December 16, 2013

Viggle Inc.

(Exact name of Registrant as specified in its charter)

Delaware
**(State or other jurisdiction of
incorporation or organization)**

01-13803
**(Commission
File Number)**

33-0637631
**(I.R.S. Employer
Identification No.)**

902 Broadway, 11th Floor, New York, New York
(Address of principal executive offices)

10010
(Zip code)

(212) 231-0092
(Registrant's telephone number including area code)

N/A
(Former name and former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

Acquisition of Wetpaint

On December 16, 2013, Viggle Inc., a Delaware corporation ("Viggle"), and Viggle Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of Viggle ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with Wetpaint.com, Inc., a Delaware corporation ("Wetpaint"), certain stockholders of Wetpaint (solely with respect to Articles 1, 5 and 6 and Subsection 11.1) and Shareholder Representative Services LLC, a Colorado limited liability company (solely in its capacity as the Stockholders' Agent).

The Merger Agreement and the transactions contemplated thereby have been approved by the board of directors of each of Viggle, Merger Sub and Wetpaint. Within twenty four hours following the execution and delivery of the Merger Agreement, Wetpaint delivered to Viggle and Merger Sub the irrevocable written consent (the "Written Consent") of certain of the holders of Wetpaint common stock (the "Wetpaint Common Stock") and Wetpaint preferred stock (the "Wetpaint Preferred Stock" and, collectively with the Wetpaint Common Stock, the "Wetpaint Capital Stock") adopting and approving the Merger Agreement and the transactions contemplated thereby. Following receipt of the Written Consent, upon the terms set forth in the Merger Agreement, Merger Sub merged with and into Wetpaint (the "Merger"), with Wetpaint continuing as the surviving corporation and a wholly-owned subsidiary of Viggle. The Merger is intended to qualify as a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended.

In connection with the Merger, all outstanding shares of Wetpaint Capital Stock were converted into the right to receive an aggregate amount of cash and shares of Viggle common stock (the "Stock Consideration") payable as described below. Promptly after the effective time of the Merger, (i) \$1,133,500 in cash (subject to certain adjustments for payment of certain transaction expenses by Viggle and bonus and premium payments to certain Wetpaint employees and stockholders) and \$18,016,667 in shares of Viggle common stock (subject to certain adjustments as described below) shall be delivered to the holders of Wetpaint Capital Stock in accordance with the allocation set forth in the Merger Agreement, and (ii) \$3,750,000 in shares of Viggle common stock (the "Escrow Shares") shall be delivered to an escrow agent to satisfy potential indemnification claims. On the earlier of a date within three business days following the date that Viggle completes a public offering of its capital stock in which it raises at least \$20,000,000 in net cash proceeds (a "Subsequent Offering") and February 15, 2014, an aggregate amount of \$3,366,500 in cash (subject to certain adjustments for changes in Wetpaint's net working capital, payment of certain transaction expenses by Viggle and bonus and premium payments to certain Wetpaint employees and stockholders) shall be delivered to the holders of Wetpaint Capital Stock in accordance with the allocation set forth in the Merger Agreement.

Pursuant to the terms of the Merger Agreement, if Viggle completes a Recapitalization (as defined in the Merger Agreement) on or prior to the earlier of the date that Viggle completes a Subsequent Offering and December 31, 2015, the Stock Consideration shall be adjusted such that (i) if upon giving effect to such Recapitalization, the shares constituting the Stock Consideration (including the Escrow Shares) collectively represent less than 13.17% of the total outstanding shares of Viggle common stock on a fully-diluted basis (subject to certain adjustments set forth in the Merger Agreement), Viggle will issue to the Viggle stockholders that are former stockholders of Wetpaint (the "Wetpaint/Viggle Holders") such additional number of shares of Viggle common stock as is necessary such that the shares constituting the Stock Consideration (including the Escrow Shares), as so adjusted, represent 13.17% of the total outstanding shares of Viggle common stock on a fully-diluted basis (subject to certain adjustments set forth in the Merger Agreement) as of such time, and (ii) if upon giving effect to such Recapitalization, the shares constituting the Stock Consideration (including the Escrow Shares) collectively represent greater than 17.55% of the total outstanding shares of Viggle common stock on a fully-diluted basis (subject to certain adjustments set forth in the Merger Agreement), then Viggle will cancel such number of shares of Viggle common stock constituting the Stock Consideration (including the Escrow Shares) as is necessary such that the Stock Consideration (including the Escrow Shares), as so adjusted, collectively represent 17.55% of the total outstanding shares of Viggle common stock on a fully-diluted basis (subject to certain adjustments set forth in the Merger Agreement) as of such time.

The Merger Agreement contains customary representations, warranties and covenants of Viggle, Merger Sub and Wetpaint.

A copy of the Merger Agreement is filed with this Current Report on Form 8-K as Exhibit 2.1 and is incorporated herein by reference. The foregoing description of the Merger Agreement is qualified in its entirety by reference to the full text of the Merger Agreement filed with this Current Report on Form 8-K.

The Merger Agreement has been included to provide investors with information regarding the terms of the Merger and the other transactions contemplated thereby. The Merger Agreement is not intended to provide any other factual information about Viggle, Wetpaint or their respective subsidiaries or affiliates. The Merger Agreement contains representations and warranties of Viggle and Wetpaint. The assertions embodied in those representations and warranties were made for purposes of the Merger Agreement and are qualified by information in confidential disclosure schedules that the parties have exchanged in connection with the execution of the Merger Agreement. The disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Merger Agreement. In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standard of materiality different from what an investor might view as material, or may have been used for purposes of allocating risk between the respective parties rather than establishing matters as facts. Accordingly, you should read the representations and warranties in the Merger Agreement not in isolation but only in conjunction with the other information about Viggle, Wetpaint and their respective subsidiaries that are included in reports, statements and other filings made by Viggle with the Securities and Exchange Commission.

Pursuant to the Merger Agreement, Viggle entered into a nomination agreement, effective at the closing of the Merger, with certain Wetpaint/Viggle Holders pursuant to which the Wetpaint/Viggle Holders party thereto were granted certain rights with respect to nominating a member of the Board or selecting a representative to attend all meetings of the Board in a nonvoting observer capacity.

Also pursuant to the Merger Agreement, Viggle entered into a stockholders agreement, effective at the closing of the Merger, with Robert F.X. Sillerman, a director and Viggle's Chief Executive Officer, and certain Wetpaint/Viggle Holders (the "Stockholders Agreement"). Pursuant to the terms of the Stockholders Agreement, the Wetpaint/Viggle Holders party to the Stockholders Agreement appointed as their proxy, and granted a power of attorney to, Mr. Sillerman with respect to any proposal submitted for Viggle stockholder approval, and authorized Mr. Sillerman to represent and vote all of such Wetpaint/Viggle Holders' shares of Viggle capital stock entitled to vote on such matters in his sole discretion during the period following the closing of the Merger until the first to occur of the time immediately prior to Viggle completing a Recapitalization and December 31, 2015. Additionally, pursuant to the Stockholders Agreement, certain Wetpaint/Viggle Holders were granted certain "pre-emptive" rights which allow them to purchase a pro rata portion of any equity securities or debt securities convertible into equity securities that Viggle proposes to offer or sell for the purposes of raising new capital (subject to certain exceptions) during the period following the closing of the Merger until the first to occur of the time immediately prior to Viggle completing a Recapitalization and December 31, 2015.

Pursuant to the Merger Agreement, Viggle also entered into a registration rights agreement, effective at the closing of the Merger, with certain Wetpaint/Viggle Holders, pursuant to which Viggle granted piggy-back registration rights to the Wetpaint/Viggle Holders party thereto for a specified period following the date that is six months following the date on which Viggle completes a Subsequent Offering.

Also pursuant to the Merger Agreement, Viggle entered into a lockup agreement, effective at the closing of the Merger, with certain Wetpaint/Viggle Holders, pursuant to which the Wetpaint/Viggle Holders party thereto are prohibited from selling shares of Viggle common stock until the date that is six months following the date on which Viggle completes a Subsequent Offering.

Pursuant to the Merger Agreement, Viggle also entered into employment agreements, effective at the closing of the Merger, with each of L. Benjamin Elowitz and Robert Grady (the "Employment Agreements"). The Employment Agreements provide that Messrs. Elowitz and Grady will serve for a three year term and also set forth their respective titles, duties and compensation. The Employment Agreements also provide for grants of restricted stock units and options. In addition, the Employment Agreements contain provisions relating to termination, confidentiality, non-solicitation and non-competition.

Viggle issued a press release announcing the transaction. The press release set forth certain user statistics for Wetpaint, including statistics showing 12 million monthly unique users, 90 million page views a month and combined social reach of over 7 million Facebook "likes" and follows on Twitter. For Wetpaint, we define a monthly unique user as any visitor who has accessed Wetpaint through its websites or mobile websites in the month of measurement, as measured by Google Analytics ("GA"). We define a page view as an instance of a user visiting a particular page on Wetpaint's websites or mobile websites in the month of measurement, also as measured by GA. We define combined social reach as the cumulative number of times people have "liked" a Wetpaint page on Facebook plus the cumulative number of times people have "followed" a Wetpaint account on Twitter. The press release also reports Viggle's number of registered users. That number is based on the definition of registered users that Viggle has historically used, which is the number of users who have registered for Viggle since launch, net of deactivated accounts.

Promissory Note and Second Amendment to Term Loan Agreement

On December 11, 2013, Viggle entered a Promissory Note with Sillerman Investment Company II LLC ("SIC II") pursuant to which SIC II loaned Viggle \$1,500,000 (the "Note"). The Note bears interest at a rate of 9% and matures on January 10, 2014, or the date on which Viggle increases the principal amount of its Term Loan with Deutsche Bank Trust Company Americas ("Deutsche Bank") in an amount allowing Viggle to repay the Note. Because the Note involved a transaction with SIC II, an affiliate of Mr. Sillerman, the transaction was approved by the independent members of Viggle's Board.

On December 13, 2013, Viggle entered into an amendment (the "Amendment") to Viggle's Term Loan Agreement with Deutsche Bank ("Term Loan Facility"). Viggle's Term Loan Agreement with Deutsche Bank provides for a line of credit of up to \$10,000,000, which was fully-drawn, and provides for a maturity date of December 16, 2013. Pursuant to the Amendment, the line of credit was increased to \$30,000,000, and the maturity date was extended to April 30, 2014. As in the original Term Loan Facility, interest will be sooner due as a result of the receipt of net proceeds by Viggle or any of its wholly-owned subsidiaries from one or more debt or equity offerings by Viggle or any of its wholly-owned subsidiaries in an amount equal to at least the amount of principal and accrued and unpaid interest outstanding on the Term Loan Facility.

The interest rate on the outstanding balance was lowered as a result of the Amendment. Previously, the interest rate on outstanding balances was, at Viggle's election, a *per annum* rate equal to the LIBOR Rate plus 4% or (ii) the Prime Rate plus 1.75%. Pursuant to the Amendment, the interest rate on outstanding balances was lowered to a *per annum* rate, at Viggle's option, of the LIBOR Rate plus 2.50%, or the Prime Rate plus 0.25%. Interest is payable monthly in arrears.

Viggle may make prepayments, in whole or in part, under the Term Loan Facility at any time, as long as all accrued and unpaid interest thereon is paid through the prepayment date.

On December 13, 2103, Viggle made a draw under the Term Loan Facility of \$16,951,000, bringing the total draws under the Term Loan Facility to \$26,951,000. The proceeds of this draw were used to repay amounts outstanding under (i) Viggle's Amended and Restated Line of Credit Grid Promissory Note, dated as of March 11, 2013, by and among SIC II and certain other investors who had funded amounts thereunder, and (ii) the Note. After this draw, Viggle has \$3,049,000 available for draws under the Term Loan Facility.

Repayment of the Term Loan Facility was guaranteed by Mr. Sillerman, and the transactions were approved by the independent members of Viggle's Board.

The foregoing descriptions of the Amendment and the transactions contemplated thereby are not complete and are subject to and qualified in their entirety by reference to the Amendment attached hereto as Exhibit 2.3, and incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets

Reference is made to the disclosure set forth under Item 1.01 of this Current Report on Form 8-K, which disclosure is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

Reference is made to the disclosure set forth under Item 1.01 of this Current Report on Form 8-K, which disclosure is incorporated herein by reference.

The issuance of the shares of Viggle common stock in connection with the Merger as described above is exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act") pursuant to Section 4(2) of the Securities Act and Regulation D promulgated under the Securities Act ("Regulation D"). Prior to the issuance of the shares of Viggle common stock, each of the Wetpaint/Viggle Holders made certain representations to Viggle as required by Regulation D. Viggle has not and will not engage in general solicitation or advertising with regard to the issuance of the shares of Viggle common stock pursuant to the Merger Agreement and has not and will not offer securities to the public in connection with the issuance of the shares of Viggle common stock pursuant to the Merger Agreement.

Item 9.01 Financial Statements and Exhibits.

The following exhibits are furnished as part of this Current Report on Form 8-K:

(a) Financial statements of business acquired.

As permitted by Item 9.01(a)(4) of Form 8-K, Viggle will file the financial statements required by Item 9.01(a)(1) of Form 8-K pursuant to an amendment to this Current Report on Form 8-K not later than seventy-one (71) calendar days after the date this initial Current Report on Form 8-K reporting the acquisition of Wetpaint was required to be filed.

(b) Pro forma financial information.

As permitted by Item 9.01(b)(2) of Form 8-K, the Company will file the pro forma financial information required by Item 9.01(b)(1) of Form 8-K pursuant to an amendment to this Current Report on Form 8-K not later than seventy-one (71) calendar days after the date this initial Current Report on Form 8-K reporting the acquisition of Wetpaint was required to be filed.

(d) Exhibits.

- 2.1 Agreement and Plan of Merger, dated as of December 16, 2013, by and among Viggle Inc., Viggle Merger Sub Inc., wetpaint.com, Inc., certain stockholders of wetpaint.com, Inc. (solely with respect to Articles 1, 5 and 6 and Subsection 11.1) and the Shareholder Representative Services LLC (solely in its capacity as the Stockholders' Agent).
- 2.2 Promissory Note, dated as of December 11, 2013, issued by Viggle Inc. to Sillerman Investment Company II LLC.
- 2.3 Second Amendment, dated as of December 13, 2013, by and between Viggle Inc. and Deutsche Bank Trust Company Americas, and its successors and assigns ("Lender").
- 99.1 Press Release issued December 16, 2013.

Additional Information About The Merger and Forward-Looking Statements

This document contains forward-looking statements concerning the Merger, future financial and operating results, benefits and synergies of the Merger, future opportunities for the combined businesses and any other statements regarding events or developments that the parties believe or anticipate will or may occur in the future. Risks and uncertainties may cause actual results and benefits of the Merger to differ materially from management expectations. Potential risks and uncertainties include, among others: general economic conditions and conditions affecting the industries in which Viggle and Wetpaint operate. Additional information regarding the factors that may cause actual results to differ materially from these forward-looking statements is available in Viggle's SEC filings, including Viggle's Annual Report on Form 10-K for the year ended June 30, 2013 and Quarterly Report on Form 10-Q for the quarterly period ending September 30, 2013. These forward-looking statements speak only as of the date of this communication and Viggle assumes no obligation to update or revise any forward-looking statement, whether as a result of new information, future events and developments or otherwise, except as required by law.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Viggle Inc.

December 16, 2013

By: /s/ Mitchell J. Nelson

Name: Mitchell J. Nelson

Title: Executive Vice President and Secretary

EXHIBIT INDEX

Exhibit	Description
2.1	Agreement and Plan of Merger, dated as of December 16, 2013, by and among Viggle Inc., Viggle Merger Sub Inc., wetpaint.com, Inc., certain stockholders of wetpaint.com, Inc. (solely with respect to Articles 1, 5 and 6 and Subsection 11.1) and the Shareholder Representative Services LLC (solely in its capacity as the Stockholders' Agent).
2.2	Promissory Note, dated as of December 11, 2013, issued by Viggle Inc. to Sillerman Investment Company II LLC.
2.3	Second Amendment, dated as of December 13, 2013, by and between Viggle Inc. and Deutsche Bank Trust Company Americas, and its successors and assigns ("Lender").
99.1	Press Release issued December 16, 2013.

AGREEMENT AND PLAN OF MERGER

by and among

VIGGLE INC.,

VIGGLE MERGER SUB INC.,

WETPAINT.COM, INC.,

and, solely with respect to Articles 1, 5 and 6 and Section 11.1,

THE SELLER PARTIES LISTED ON EXHIBIT A-1 HERETO,

and

SHAREHOLDER REPRESENTATIVE SERVICES LLC

(solely in its capacity as the Stockholders' Agent as agent for and on behalf of the Eligible Stockholders of the Company)

Dated as of December 16, 2013

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Disclosure Schedule

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER is made and entered into as of December 16, 2013, by and among VIGGLE INC., a Delaware corporation ("Parent"), VIGGLE MERGER SUB INC., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub"), WETPAINT.COM, INC., a Delaware corporation (the "Company"), and, solely with respect to Articles 1, 5 and 6 and Section 11.1, the Persons listed on Exhibit A-1 (each, a "Seller Party", and collectively, the "Seller Parties") and SHAREHOLDER REPRESENTATIVE SERVICES LLC, a Colorado limited liability company, solely in its capacity as the Stockholders' Agent as agent for and on behalf of the Eligible Stockholders of the Company. Certain other capitalized terms used in this Agreement are defined in Annex I.

RECITALS

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the General Corporation Law of the State of Delaware, as amended (the "DGCL"), Parent, Merger Sub and the Company will enter into a business combination transaction pursuant to which Merger Sub will merge with and into the Company (the "Merger"), with the Company as the surviving corporation (the "Surviving Corporation");

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

WHEREAS, the Board of Directors of Parent (the "Parent Board") has determined that the Merger is consistent with and in furtherance of the long-term business strategy of Parent, and in the best interests of Parent and its stockholders and has approved and adopted this Agreement, the Merger and the other transactions contemplated by this Agreement and declared its advisability;

WHEREAS, the Board of Directors of Merger Sub (i) has determined that the Merger is in the best interests of Merger Sub and its sole stockholder and has approved and adopted this Agreement, the Merger and the other transactions contemplated by this Agreement and declared its advisability and (ii) has recommended that Parent, as the sole stockholder of Merger Sub, approve and adopt this Agreement and the Merger;

WHEREAS, within 24 hours following the execution and delivery of this Agreement, Merger Sub shall have delivered to the Company Parent's written consent approving and adopting this Agreement, in its capacity as sole stockholder of Merger Sub, in accordance with the requirements of the DGCL;

WHEREAS, as of the date hereof, the Persons listed on Exhibit A-2 own in the aggregate 100% of the issued and outstanding: (i) shares of Common Stock, par value \$0.0001 per share, of the Company ("Company Common Stock"), (ii) shares of Series A Preferred Stock, par value \$0.0001 per share, of the Company ("Company Series A Preferred Stock"), (iii) shares of Series B Preferred Stock, par value \$0.0001 per share, of the Company ("Company Series B Preferred Stock"), (iv) shares of Series C Preferred Stock, par value \$0.0001 per share, of the Company ("Company Series C Preferred Stock"), and together with the Company Series A Preferred Stock and the Company Series B Preferred Stock, the "Company Preferred Stock", in each case in such amounts as are set forth opposite each Person's name on Exhibit A-2, which Company Common Stock and Company Preferred Stock constitute all of the issued and outstanding Company Capital Stock, and securities exercisable for or convertible into Company Preferred Stock, as of the date of this Agreement;

WHEREAS, in connection with the execution and delivery of this Agreement, and as a condition to the willingness of Parent and Merger Sub to enter into this Agreement, the Company shall deliver to Parent and Merger Sub the irrevocable written consent of certain of the holders of Company Capital Stock (representing the Required Merger Stockholder Votes) adopting and approving the Merger and this Agreement;

WHEREAS, in connection with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement, Parent and certain of the stockholders of the Company and of Parent shall execute and deliver, concurrently with the Closing, a stockholders agreement substantially in the form attached as Exhibit B-1 (the "Stockholders Agreement");

WHEREAS, in connection with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement, Parent and certain of the stockholders of the Company and of Parent shall execute and deliver, concurrently with the Closing, a nomination agreement substantially in the form attached as Exhibit B-2 (the "Nomination Agreement");

WHEREAS, in connection with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement, Parent and the Key Employees shall execute and deliver, concurrently with the Closing, employment agreements substantially in the form attached as Exhibit C or in such other form as may be agreed by Parent and the Key Employees (the

"Employment Agreements"), which Employment Agreements will be effective at Closing;

WHEREAS, in connection with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement, Parent and certain of the stockholders of the Company and of Parent shall execute and deliver, concurrently with the Closing, a registration rights agreement substantially in the form attached as Exhibit E (the "Registration Rights Agreement");

WHEREAS, in connection with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement, Parent and certain of the stockholders of the Company and of Parent shall execute and deliver, concurrently with the Closing, a lockup agreement substantially in the form attached as Exhibit F (the "Lockup Agreement"); and

WHEREAS, the parties intend for the Merger to constitute an integrated transaction that qualifies as a reorganization with the meaning of Section 368(a) of the Code.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. DESCRIPTION OF TRANSACTION

1.1 Merger of the Merger Sub into Company. Upon the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time, (i) the Merger Sub shall be merged with and into Company, (ii) the separate existence of the Merger Sub shall cease and (iii) the Company shall be the Surviving Corporation of the Merger and shall continue its legal existence under the DGCL.

1.2 Effect of the Merger. At and after the Effective Time, the Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, the Surviving Corporation shall possess all the rights, privileges, powers and franchises, and be subject to all of the restrictions, disabilities and duties of the Company and Merger Sub, as provided under Section 259 of the DGCL.

1.3 Closing; Effective Time. Upon the terms and subject to the conditions of this Agreement, the closing of the Merger (the "Closing") shall take place at the offices of Greenberg Traurig, LLP, The MetLife Building, 200 Park Avenue, New York, New York 10166, unless another place is agreed to in writing by the parties hereto, on the date on which all of the conditions to the Closing set forth in Article 7 and Article 8 shall have been satisfied or waived (other than conditions that, by their nature, cannot be satisfied until the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or on such other date, time and place as the Company and Parent may mutually agree in writing (the "Closing Date"). Contemporaneously with or promptly as practicable after the Closing, the Company and Merger Sub shall cause a properly executed certificate of merger (the "Certificate of Merger") conforming to the requirements of the DGCL to be filed with the Secretary of State of the State of Delaware. The Merger shall become effective as of the date and time that the Certificate of Merger is filed and accepted by the Secretary of State of the State of Delaware (the "Effective Time").

1.4 Organizational Documents; Directors and Officers

(a) At and after the Effective Time:

(i) the certificate of incorporation of the Surviving Corporation shall be the certificate of incorporation of the Company as in effect immediately prior to the Effective Time (which shall contain such provisions as are necessary to give full effect to the exculpation and indemnification provided for in Section 4.2 hereof) until thereafter amended as provided and in accordance with applicable Legal Requirements; and

(ii) the bylaws of the Surviving Corporation shall be the bylaws of the Company as in effect immediately prior to the Effective Time (which shall contain such provisions as are necessary to give full effect to the exculpation and indemnification provided for in Section 4.2 hereof) until thereafter amended as provided and in accordance with applicable Legal Requirements.

(b) The directors and officers of the Surviving Corporation immediately after the Effective Time shall be those Persons designated by Parent.

1.5 Treatment of Company Capital Stock and Company Options

(a) Conversion of Company Capital Stock Subject to Sections 1.5(b), 1.10 and 1.11, as of the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any stockholder of the Company or Merger Sub:

(i) each share of Company Capital Stock owned by Parent, Merger Sub, the Company or any direct or indirect wholly-owned subsidiary of Parent, Merger Sub or the Company immediately prior to the Effective Time ("Disregarded Shares"), if any, shall be canceled without payment of any consideration with respect thereto;

(ii) each share of Company Common Stock outstanding immediately prior to the Effective Time (other than Disregarded Shares and Dissenting Shares (as defined below)) shall be converted into the right to receive from Parent (A) an amount in cash equal to the Common Per Share Closing Date Cash Consideration *plus* (B) a number of shares of Parent Common Stock equal to the Common Per Share Closing Date Stock Consideration *plus* (C) an amount in cash equal to the Common Per Share Final Payment Date Cash Consideration *plus* (D) a number of shares of Parent Common Stock equal to a share of Company Common Stock's Pro Rata Portion of the Escrow Amount *plus* (E) an amount in cash equal to a share of Company Common Stock's Pro Rata Portion of the Escrow Expense Fund;

(iii) each share of Company Series A Preferred Stock outstanding immediately prior to the Effective Time (other than Disregarded Shares and Dissenting Shares) shall be converted into the right to receive from Parent (A) an amount in cash equal to the Series A Preferred Per Share Closing Date Cash Consideration *plus* (B) a number of shares of Parent Common Stock equal to the Series A Preferred Per Share Closing Date Stock Consideration *plus* (C) an amount in cash equal to the Series A Preferred Per Share Final Payment Date Cash Consideration *plus* (D) a number of shares of Parent Common Stock equal to a share of Company Series A Preferred Stock's Pro Rata Portion of the Escrow Amount *plus* (E) an amount in cash equal to a share of Company Series A Preferred Stock's Pro Rata Portion of the Escrow Expense Fund;

(iv) each share of Company Series B Preferred Stock outstanding immediately prior to the Effective Time (other than Disregarded Shares and Dissenting Shares) shall be converted into the right to receive from Parent (A) an amount in cash equal to the Series B Preferred Per Share Closing Date Cash Consideration *plus* (B) a number of shares of Parent Common Stock equal to the Series B Preferred Per Share Closing Date Stock Consideration *plus* (C) an amount in cash equal to the Series B Preferred Per Share Final Payment Date Cash Consideration *plus* (D) a number of shares of Parent Common Stock equal to a share of Company Series B Preferred Stock's Pro Rata Portion of the Escrow Amount *plus* (E) an amount in cash equal to a share of Company Series B Preferred Stock's Pro Rata Portion of the Escrow Expense Fund; and

(v) each share of Company Series C Preferred Stock outstanding immediately prior to the Effective Time (other than Disregarded Shares and Dissenting Shares) shall be converted into the right to receive from Parent (A) an amount in cash equal to the Series C Preferred Per Share Closing Date Cash Consideration *plus* (B) a number of shares of Parent Common Stock equal to the Series C Preferred Per Share Closing Date Stock Consideration *plus* (C) an amount in cash equal to the Series C Preferred Per Share Final Payment Date Cash Consideration *plus* (D) a number of shares of Parent Common Stock equal to a share of Company Series C Preferred Stock's Pro Rata Portion of the Escrow Amount *plus* (E) an amount in cash equal to a share of Company Series C Preferred Stock's Pro Rata Portion of the Escrow Expense Fund.

(b) Aggregate Merger Consideration Adjustments. The Merger Consideration shall be subject to each of the adjustments set forth below at the following times:

(i) In accordance with and subject to Section 1.7, the Aggregate Final Payment Date Cash Consideration shall be increased or decreased on the Final Payment Date (or, if the Post-Closing Adjustment has not yet been determined as of the Final Payment Date, promptly, but in no event later than five (5) Business Days following determination of the Post-Closing Adjustment) by the Difference.

(ii) In accordance with and subject to Section 1.8, in the event of a Recapitalization of Parent, if upon giving effect to such Recapitalization and as immediately prior to a Subsequent Public Offering, the shares constituting the Aggregate Closing Date Stock Consideration and the Escrow Amount (including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) do not collectively represent between 13.17% and 17.55% of the Fully-Diluted Shares, then Parent shall issue such additional number of shares of Parent Common Stock as is necessary so that the Aggregate Closing Date Stock Consideration and the Escrow Amount including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) collectively represent 13.17% of the Fully-Diluted Shares or shall cancel such number of shares of Parent Common Stock as is necessary so that the Aggregate Closing Date Stock Consideration and the Escrow Amount (including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) collectively represent 17.55% of the Fully-Diluted Shares as of such time.

(iii) In accordance with and subject to Article 6, the Escrow Amount shall be reduced to satisfy the Eligible Stockholders' indemnification obligations to Parent and Merger Sub hereunder from time to time in accordance with Article 5.

(iv) In accordance with and subject to Article 6, the Escrow Expense Fund shall be reduced to satisfy the Stockholders' Agent's expenses from time to time in accordance with Section 1.9.

(c) Treatment of Merger Sub Stock. By virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any stockholder of the Company or Merger Sub, each share of the common stock, no par value per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and shall be one (1) share of the common stock, no par value per share, of the Surviving Corporation. Each certificate evidencing ownership of shares of Merger Sub stock will evidence ownership of such shares of common stock of the Surviving Corporation.

(d) Treatment of Company Options. All Company Options that are issued and outstanding immediately prior to the Effective Time will terminate at the Effective Time without any further action by the holder thereof in accordance with the terms of the Company Option Plan or any stock option grant agreements, as applicable, without payment of any consideration payable with respect thereto.

1.6 Delivery of Closing Merger Consideration.

(a) The Merger Consideration, as adjusted pursuant to Section 1.5(b), shall be delivered at the following times:

(i) cash in the amount of the Aggregate Closing Date Cash Consideration, shall be delivered to the holders of Company Capital Stock promptly after the Effective Time, and a portion of such Aggregate Closing Date Cash Consideration, as determined pursuant to Section 1.5, shall be exchanged for each share of Company Capital Stock, immediately following the surrender of the certificate representing such share of Company Capital Stock or an indemnification agreement with respect thereto in accordance with Section 1.11;

(ii) shares of Parent Common Stock constituting the Aggregate Closing Date Stock Consideration shall be delivered to the holders of Company Capital Stock promptly after the Effective Time, and a portion of such Aggregate Closing Date Stock Consideration, as determined pursuant to Section 1.5, shall be exchanged for each share of Company Capital Stock immediately following the surrender of the certificate representing such share of Company Capital Stock or an indemnification agreement with respect thereto in accordance with Section 1.11;

(iii) shares of Parent Common Stock constituting any upward adjustment to the Aggregate Closing Date Stock Consideration pursuant to Section 1.8 shall be delivered to the holders of Company Capital Stock within three (3) Business Days after effecting the Recapitalization, and a portion of such additional Aggregate Closing Date Stock Consideration, as determined pursuant to Section 1.5, shall be issued to each share of Company Capital Stock which has surrendered the certificate representing such share of Company Capital Stock or an indemnification agreement with respect thereto in accordance with Section 1.11, or, if such surrender has not occurred, immediately following the surrender thereof;

(iv) the Escrow Amount shall be delivered to the Escrow Agent pursuant to Section 6.1 promptly after the Effective Time, and to the extent not used to satisfy the Eligible Stockholders' indemnification obligations to Parent and Merger Sub hereunder, shall be released to the holders of Company Capital Stock from time to time in accordance with Section 6.3;

(v) the Closing Date Escrow Expense Fund Amount shall be delivered to the Escrow Agent as portion of the Escrow Expense Fund pursuant to Section 6.2 promptly after the Effective Time, and to the extent not used to satisfy the Stockholders' Agent's expenses pursuant to Section 6.2, shall be released to the holders of Company Capital Stock in accordance with Section 6.3;

(vi) the Final Payment Date Escrow Expense Fund Amount shall be delivered to the Escrow Agent as a portion of the Escrow Expense Fund pursuant to Section 6.2 on the Final Payment Date, and to the extent not used to satisfy the Stockholders' Agent's expenses pursuant to Section 6.2, shall be released to the holders of Company Capital Stock in accordance with Section 6.3; and

(vii) subject to Section 1.7(e), cash in the amount of the Aggregate Final Payment Date Cash Consideration shall be delivered to the holders of Company Capital Stock on the Final Payment Date in the amounts determined pursuant to Section 1.5.

(b) Prior to the Closing Date, the Company will deliver to Parent a schedule, certified by the chief executive officer of the Company, setting forth (i) the identity of each holder of shares of Company Capital Stock, and the amounts and classes of securities held by it, (ii) the portion of the aggregate Merger Consideration payable to such holder and its corresponding Pro Rata Portion, (iii) details regarding the components of the portion of the Merger Consideration allocable to each of the securities held by such holder, (iv) the name and mailing address of record to which shares of Parent Common Stock are to be issued and cash paid (the "Allocation Spreadsheet").

(c) For the avoidance of doubt, notwithstanding anything in this Agreement to the contrary, in no event shall the aggregate amount to be paid by Parent to all of the holders of Company Capital Stock pursuant to Section 1.5, including the amount delivered pursuant to the Note and the Transaction Expenses (but not including any Premium Payments) exceed an amount of cash equal to Cash on Hand *plus* \$4,500,000 (Four Million Five Hundred Thousand Dollars), the Aggregate Closing Date Stock Consideration, the Escrow Amount and the Escrow Expense Fund; provided, however that such amounts will increase dollar-for-dollar to the extent the Net Working Capital of the Company is greater than the Working Capital Target as determined pursuant to Section 1.7.

(d) Prior to the date hereof, Parent provided the Company \$500,000 (Five Hundred Thousand Dollars) pursuant to a promissory note (the "Note"), which promissory note will be extinguished at the Closing.

1.7 Pre-Closing and Post-Closing Net Working Capital Adjustments of Consideration The Merger Consideration shall be subject to adjustment at and after the Closing as specified in this Section 1.7:

(a) Pre-Closing Statement.

(i) Not fewer than one (1) Business Day prior to the anticipated Closing Date, the Company and the

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Seller Parties shall deliver to the Parent and Merger Sub a certificate (the "Pre-Closing Statement") setting forth the Company and the Seller Parties' good faith estimates of the Net Working Capital and the amount, if any, by which the estimated Net Working Capital set forth in the Pre-Closing Statement is more or less than the Working Capital Target (the "Adjustment Amount"), together with supporting documentation for such estimates and any additional information reasonably requested by Parent. The Pre-Closing Statement shall be prepared in consultation with Parent and shall be reasonably acceptable to Parent.

(ii) RESERVED.

(b) Closing Statement. Within 45 days following the Closing Date, Parent shall prepare and deliver to the Stockholders' Agent a certificate (the "Closing Statement") setting forth Parent's determination of Net Working Capital, determined in accordance with the Balance Sheet Rules. Following delivery of the Closing Statement, Parent shall provide the Stockholders' Agent with any supporting documentation for the Closing Statement that the Stockholders' Agent may reasonably request and the Parent shall use commercially reasonable efforts as practicable to respond promptly, in good faith and as fully and accurately as is reasonably possible to inquiries from the Stockholders' Agent related to such review. The Parent will use reasonable efforts to provide access to the books and records of the Company electronically, and shall transmit financial statements, general journals and trial balances of the Company and its subsidiaries in formats such as Excel spreadsheets, or searchable Word or pdf documents. If the Parent does not deliver a Closing Statement within such 45-day period, then the Pre-Closing Statement shall become final and binding upon all parties.

(c) Dispute Resolution. Within 30 days after the Stockholders' Agent receipt of the Closing Statement, the Stockholders' Agent shall deliver to the Parent a written statement either accepting the Closing Statement or specifying any objections thereto in reasonable detail (an "Objections Statement"), which objections shall be in reasonable detail describing the nature and amount of the disagreement(s) asserted. If the Stockholders' Agent does not deliver an Objections Statement within such 30-day period, then the Closing Statement shall become final and binding upon all parties. If the Stockholders' Agent does deliver an Objections Statement within such 30-day period, then the Stockholders' Agent and the Parent shall negotiate in good faith for 15 days following Parent's receipt of such Objections Statement to resolve such objections (any unresolved objection, a "Dispute"). After such 15-day period, any item or matter set forth in the Closing Statement that is not a Dispute shall become final and binding upon all parties. If the Parent and the Stockholders' Agent are unable to resolve all objections during such 15-day period, then any remaining Disputes, and only such remaining Disputes, shall be resolved by the Accounting Firm. The Accounting Firm shall be instructed to resolve any such remaining Disputes in accordance with the terms of this Agreement within 15 days after its appointment (or such longer period as the Parent and the Stockholders' Agent may agree). The resolution of such Disputes by the Accounting Firm (i) shall be set forth in writing, (ii) shall be within the range of dispute between the Parent and the Stockholders' Agent, (iii) shall constitute an arbitral award, and (iv) shall be conclusive and binding upon all the parties upon which a judgment may be rendered by a court having proper jurisdiction thereover. Upon delivery of such resolution, the Closing Statement, as modified in accordance with such resolution, shall become final and binding upon all parties.

(d) Fees and Expenses of Accounting Firm. The fees, costs and expenses of the Accounting Firm shall be borne by either the Parent or the Eligible Stockholders as follows: (i) if the Accounting Firm determines that the Net Working Capital is nearer to the Net Working Capital determined by the Stockholders' Agent than to the Net Working Capital determined by Parent, then Parent shall bear the fees, costs and expenses of the Accounting Firm, and (ii) if the Accounting Firm determines that the Net Working Capital is nearer to the Net Working Capital determined by Parent than to the Net Working Capital determined by the Stockholders' Agent, then the Eligible Stockholders shall bear the fees, costs and expenses of the Accounting Firm.

(e) Final Adjustment Amounts. The post-closing adjustment shall be an amount equal to the Net Working Capital as set forth in the final Closing Statement minus the Working Capital Target (the "Post-Closing Adjustment"). If the Post-Closing Adjustment is a negative number, then the Aggregate Final Payment Date Cash Consideration shall be reduced by an amount of cash equal to the absolute value of the Post-Closing Adjustment (the "Difference"); if the Post-Closing Adjustment is a positive number, then the Aggregate Final Payment Date Cash Consideration shall be increased by an amount of cash equal to the Difference. The Parties agree that, if the Post-Closing Adjustment has not yet been determined as of the Final Payment Date, but the Closing Statement (if it were to become final and binding) would trigger a downward adjustment to the Merger Consideration under this Section 1.7(e), then Parent may, in its sole discretion, hold back the amount in cash of the hypothetical Difference pursuant to that Closing Statement from the Aggregate Final Payment Date Cash Consideration, provided that the Parent shall release any portion of such held back amount that is determined to be Aggregate Final Payment Date Cash Consideration promptly, but in no event later than five (5) Business Days following determination of the Post-Closing Adjustment.

1.8 Recapitalization Adjustments of Consideration. In the event of a Recapitalization, the Aggregate Closing Date Stock Consideration and the Escrow Amount (including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) shall be subject to proportional adjustment after the Closing as specified in this Section 1.8 (provided that the full amount of any such adjustment allocable to the Escrow Amount shall be made to the shares remaining in the Escrow Amount):

(a) If upon giving effect to such Recapitalization and as of immediately prior to a Subsequent Public Offering, the shares constituting the Aggregate Closing Date Stock Consideration and the Escrow Amount (including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) collectively represent less than 13.17% of the Fully-Diluted Shares, then Parent shall issue such additional number of shares of Parent Common Stock to be added to the Aggregate Closing Date Stock Consideration and the Escrow Amount as is necessary so that the Aggregate Closing Date Stock Consideration and the Escrow Amount (including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) collectively represent 13.17% of the Fully-Diluted Shares. For the avoidance of doubt, (i) no additional consideration, in any form, shall be due or payable to Parent on account of such adjustment and (ii) such adjustment shall occur ratably between the Aggregate Closing Date Stock

(b) If upon giving effect to such Recapitalization and as of immediately prior to a Subsequent Public Offering, the shares constituting the Aggregate Closing Date Stock Consideration and the Escrow Amount (including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) collectively represent greater than 17.55% of the Fully-Diluted Shares as of such time, then Parent shall cancel such number of shares of Parent Common Stock constituting Aggregate Closing Date Stock Consideration and the Escrow Amount as is necessary so that the Aggregate Closing Date Stock Consideration and the Escrow Amount (including, for the avoidance of doubt, any shares that were part of the Escrow Amount, even if they have been used to satisfy one or more claims for indemnification) collectively represent 17.55% of the Fully-Diluted Shares as of such time. For the avoidance of doubt, (i) no additional consideration, in any form, shall be due or payable to the Eligible Stockholders on account of such adjustment and (ii) such adjustment shall occur ratably between the Aggregate Closing Date Stock Consideration and the Escrow Amount.

(c) The provisions of this Section 1.8 shall terminate upon the occurrence of a Subsequent Public Offering.

1.9 Payment of Transaction Expenses, Management Cash Transaction Bonus Payments, and Premium Payments.

(a) Transaction Expenses. Each of the parties shall pay its own fees, costs and expenses incurred by it relating to this Agreement, the Merger and the other transactions contemplated hereby, including, without limitation, the fees and expenses payable to the Company's legal and financial advisors. In furtherance and not in limitation of the foregoing, the parties acknowledge and agree that the Transaction Expenses shall be paid directly by Parent to the service providers owed such Transaction Expenses as follows: (i) the Transaction Expenses identified as "Closing Transaction Expenses" on Exhibit H at Closing and (ii) the Transaction Expenses identified as "Final Payment Date Transaction Expenses" on Exhibit H plus on the Final Payment Date.

(b) Management Cash Transaction Bonus Payments. Parent shall cause Surviving Corporation to pay to each individual listed on Exhibit J, through a Surviving Corporation payroll account, the amount set forth opposite such individual's name on such payment dates set forth on Exhibit J, less any Taxes required to be withheld pursuant to Section 1.11(h); provided that all applicable terms and conditions under the Management Bonus Plan have been satisfied prior to the applicable payment date. Parent will transfer a portion of the Merger Consideration to a Surviving Corporation payroll account to enable Surviving Corporation to make such payments.

(c) Closing Bonus Payments. Parent will cause Surviving Corporation to pay to each individual listed on Exhibit L, through a Surviving Corporation payroll account, the amount set forth in the column opposite such individual's name (collectively the "Closing Bonus Payments"), less any Taxes required to be withheld pursuant to Section 1.11(h), as promptly as practicable following the Effective Time, but in no event later than December 31, 2013. Parent will transfer a portion of the Merger Consideration to a Surviving Corporation payroll account to enable Surviving Corporation to make such payments.

(d) Premium Payments. On the Final Payment Date, Parent shall pay (or, as indicated on Exhibit K, cause Surviving Corporation to pay through a Surviving Corporation payroll account) to each Person listed on Exhibit K a premium payment (a "Premium Payment") in the amount set forth opposite such Person's name, less any Taxes required to be withheld pursuant to Section 1.11(h). The Premium Payments shall be paid directly by the Parent and shall not reduce the Merger Consideration or be deemed Damages subject to indemnification pursuant to Article 5. To the extent a Premium Payment is being provided to a then current employee of the Surviving Corporation, Parent will transfer such funds to a Surviving Corporation payroll account to enable Surviving Corporation to make such payments.

(e) The Company shall take (or cause to be taken) such actions that are necessary to amend the arrangements with the service providers owed Transaction Expenses and the Management Bonus Plan to provide for payment of Transaction Expenses at the time and in the manner set forth in Section 1.9.

1.10 Dissenting Shares.

(a) Effect on Dissenting Shares. Notwithstanding any provisions of this Agreement to the contrary, shares of Company Capital Stock held by a holder who has demanded and perfected such demand for appraisal of such holder's shares of Company Capital Stock in accordance with Section 262 of the DGCL and has neither effectively withdrawn nor lost such holder's right to such appraisal (the "Dissenting Shares") shall not be converted into the applicable Merger Consideration, but shall be canceled and shall cease to exist and shall represent the right only to receive such rights as are granted by the DGCL. Parent shall be entitled to retain any Merger Consideration not paid on account of such Dissenting Shares pending resolution of the claims of such holders, and the Eligible Stockholders shall not be entitled to any portion thereof.

(b) Loss of Dissenting Share Status. Notwithstanding the provisions of Section 1.10(a), if any holder of shares of Company Capital Stock who demands appraisal of such holder's shares under the DGCL shall effectively withdraw or lose (through the failure to perfect or otherwise) such holder's right to appraisal, then as of the occurrence of such event, such holder's shares of Company Capital Stock shall automatically be converted into the right to receive the applicable Merger Consideration, without interest thereon, as and when payable pursuant to this Agreement.

(c) Notice of Dissenting Shares. The Surviving Corporation or Parent, as the case may be, shall give the Stockholders' Agent: (i) prompt notice of any demands for appraisal of shares of Company Capital Stock received by the Surviving Corporation or Parent, withdrawals of any demands, and any other instruments served pursuant to the DGCL and received by the Surviving Corporation or Parent; and (ii) the opportunity to participate in all negotiations and proceedings with respect to any such demands for appraisal, provided that the Surviving Corporation and Parent shall have the right to direct all such negotiations and proceedings. Neither the Surviving Corporation nor Parent shall, except with the prior written consent of the Stockholders' Agent, which consent shall not be unreasonably withheld or delayed, make any payment with respect to any demands for appraisal of shares of Company Capital Stock or offer to settle any such demands in each case for any amount in excess of what is payable by Parent in accordance with this Agreement with respect to such shares of Company Capital Stock.

or pursuant to a final order of a court of competent jurisdiction. The Stockholders' Agent shall not, except with the prior written consent of Parent, which consent shall not be unreasonably withheld or delayed, make any payment with respect to any demands for appraisal of shares of Company Capital Stock or offer to settle any such demands other than by operation of law or pursuant to a final order of a court of competent jurisdiction.

1.11 Exchange of Certificates.

(a) Letter of Transmittal – Capital Stock. Not later than ten (10) days following the Effective Time, Parent shall mail, or cause to be mailed, to each record holder of Company Capital Stock immediately prior to the Effective Time: (i) a letter of transmittal to be mutually agreed to by Parent and the Company (which shall specify that delivery of Company Stock Certificates shall be effected, and risk of loss and title to Company Stock Certificates shall pass, only upon delivery of such Company Stock Certificates to Parent, and a provision whereby such holder agrees to be bound by the provisions of Articles 5 and 6 and Section 1.1.1 and a covenant to become a "Stockholder" under the Stockholders Agreement) (a "Letter of Transmittal"); and (ii) instructions for use in effecting the exchange of Company Stock Certificates for the Merger Consideration payable with respect to such Company Capital Stock. Upon the surrender to Parent of a Company Stock Certificate (or an indemnity agreement as described in Section 1.11(d)), together with a duly executed Letter of Transmittal, the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor the Merger Consideration that such holder has the right to receive pursuant to this Agreement, and the Company Stock Certificate so surrendered shall forthwith be canceled. From and after the Effective Time, each Company Stock Certificate which prior to the Effective Time represented shares of Company Capital Stock shall be deemed to represent only the right to receive the Merger Consideration payable with respect to such shares, and the holder of each such Company Stock Certificate shall cease to have any rights with respect to the shares of Company Capital Stock formerly represented thereby. Parent shall have the option of appointing an exchange agent approved by the Stockholders' Agent, which approval shall not be unreasonably withheld or delayed, to carry out the provisions of this Section 1.11.

(b) Payments to Others. If payment or issuance of Merger Consideration in respect of shares of Company Capital Stock converted pursuant to this Agreement is to be made to a Person other than the Person in whose name a surrendered Company Stock Certificate is registered, it shall be a condition to such payment that the Company Stock Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and that the Person requesting such payment shall have paid any transfer and other Taxes required by reason of such payment in a name other than that of the registered holder of the Company Stock Certificate surrendered or shall have established to the reasonable satisfaction of Parent that such Tax either has been paid or is not payable.

(c) Stock Transfer Books. As of the Effective Time, the stock transfer books of the Company shall be closed and there shall not be any further registration of transfers of shares of Company Capital Stock thereafter on the records of the Company. If, after the Effective Time, certificates for shares of Company Capital Stock ("Company Stock Certificates") are presented to the Surviving Corporation, they shall be canceled and exchanged for the Merger Consideration payable with respect to such shares as provided for in this Article 1. No interest shall accrue or be paid on any Merger Consideration payable upon the surrender of a Company Stock Certificate which immediately before the Effective Time represented outstanding shares of Company Capital Stock.

(d) Lost Certificates. In the event any Company Stock Certificate representing shares of Company Capital Stock converted in connection with the Merger pursuant to Section 1.5 shall have been lost, stolen or destroyed, Parent may, in its reasonable discretion and as a condition precedent to the payment of any Merger Consideration with respect to the shares of Company Capital Stock previously represented by such Company Stock Certificate, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate and reasonable indemnity agreement providing for indemnity against any claim that may be made against Parent, the Surviving Corporation or any affiliated party with respect to such Company Stock Certificate.

(e) Dividends. No dividends or other distributions declared or made with respect to Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Company Stock Certificate with respect to the shares of Parent Common Stock represented thereby, until such holder surrenders such Company Stock Certificate or, if such Company Stock Certificate is lost or stolen, such holder delivers the indemnity agreement referred to in paragraph (d) above, in accordance with this Section 1.11 (at which time such holder shall be entitled, subject to the effect of applicable abandoned property, escheat or similar laws and subject to Section 1.11(g), to receive all such dividends and distributions).

(f) Cash in Lieu of Fractional Shares. No fractional shares of Parent Common Stock shall be issued, no certificates for any such fractional shares shall be issued and no cash payment in lieu of any fractional share shall be paid to any holder in connection with the Merger. After aggregating all fractional shares of Parent Stock due to a particular Eligible Stockholder pursuant to Section 1.5, any remaining fraction of a share of Parent Common Stock shall be rounded down to the nearest whole number.

(g) Escheat. Notwithstanding anything in this Agreement to the contrary, neither Parent nor any other Person shall be liable to any holder of shares of Company Capital Stock or to any other Person for any amount paid to a public official pursuant to applicable abandoned property law, escheat law or similar Legal Requirement. Any amounts remaining unclaimed by holders of shares of Company Capital Stock and/or Company Options at such time as such amounts would otherwise escheat to or become property of any Governmental Body shall, to the extent permitted by applicable Legal Requirements, become the property of Parent free and clear of any Encumbrance.

(h) Withholding. Each of Parent and the Surviving Corporation shall be entitled to deduct and withhold from any

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consideration payable or issuable pursuant to this Agreement to any Person such amounts as are required to be deducted or withheld therefrom or in connection therewith under the Code or any provision of state, local or foreign Tax law or similar Legal Requirement or under any other applicable Legal Requirement. To the extent such amounts are so deducted or withheld and paid to the appropriate Governmental Bodies, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. To the extent that amounts are so withheld and paid over to the appropriate Governmental Body by Parent or the Surviving Corporation, as the case may be, Parent or the Surviving Corporation, as the case may be, shall deliver a notice to the affected security holder of the amount so deducted, withheld or paid over.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure schedules delivered by the Company concurrently with the execution of this Agreement to Parent and Merger Sub (the "Disclosure Schedule"), which shall identify any exceptions to the representations, warranties and covenants contained in this Agreement (with specific reference to the particular Section or subsection to which such information relates; provided, however, that any information set forth in one section of such Disclosure Schedule also shall be deemed to apply to each other section and subsection of this Agreement to which its relevance is reasonably apparent), the Company represents and warrants to Parent and Merger Sub as follows:

2.1 Due Organization; No Subsidiaries; Etc.

(a) Organization. The Company has been duly organized, and is validly existing and in good standing under the laws of the State of Delaware. The Company has the requisite corporate power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to perform its material obligations under all Company Material Contracts.

(b) Qualification. The Company is duly qualified to do business as a foreign corporation, and is in good standing, under the laws of all jurisdictions where the property owned, leased or operated by it or the nature of its business requires such qualification and where the failure to be so qualified will or would reasonably be expected to have or result in a Company Material Adverse Effect. Part 2.1(b) of the Disclosure Schedule accurately sets forth each jurisdiction where the Company is qualified to do business as a foreign corporation.

(c) Directors and Officers. Part 2.1(c) of the Disclosure Schedule accurately sets forth: (i) the names of the members of the Company Board; (ii) the names of the members of each committee of the Company Board; and (iii) the names and titles of the officers of the Company.

(d) No Subsidiaries. The Company has not ever owned, beneficially or otherwise, any shares or other securities of, or any direct or indirect equity interest in, any Entity. The Company has not agreed and is not obligated to make any future investment in or capital contribution to any Entity. Except as set forth on Part 2.1(d) of the Disclosure Schedule, the Company has not guaranteed and is not responsible or liable for any obligation of any Entity.

2.2 Charter Documents; Records. The Company has made available to Parent or its Representatives accurate and complete copies of: (a) the certificate of incorporation and bylaws, including all amendments thereto, of the Company (the "Charter Documents"); and (b) the minutes and other records of the meetings and other proceedings (including any actions taken by written consent or otherwise without a meeting) of the stockholders and the board of directors of the Company since January 1, 2010. The Company is not in material violation of any of its Charter Documents.

2.3 Capitalization.

(a) Outstanding Securities. The authorized capital stock of the Company as of the date of this Agreement consists of: (i) 18,500,000 shares of Company Common Stock, of which 3,722,757 shares are issued and outstanding; and (ii) 11,350,000 shares of Company Preferred Stock, of which: (A) 5,250,000 shares are designated as Series A Preferred Stock, 5,250,000 shares of which are issued and outstanding; (B) 3,600,000 shares are designated as Series B Preferred Stock, 3,512,875 shares of which are issued and outstanding; and (C) 2,500,000 shares are designated as Series C Preferred Stock, 2,485,089 shares of which are issued and outstanding. There are no shares of capital stock held in the Company's treasury. Except as set forth in Part 2.3(a) of the Disclosure Schedule, the Company has never declared or paid any dividends on any shares of Company Capital Stock. Part 2.3(a) of the Disclosure Schedule sets forth the names of the Company's stockholders and the class, series and number of shares of Company Capital Stock owned of record by each of such stockholders. All of the outstanding shares of Company Capital Stock have been duly authorized and validly issued, and are fully paid and nonassessable. Each share of Company Preferred Stock is convertible into one share of Company Common Stock.

(b) Company Options: Restricted Stock. The Company has reserved 4,102,036 shares of Company Common Stock for issuance under the Company Option Plan, of which options to purchase 2,461,879 shares of Company Common Stock are currently outstanding and 572,757 shares of Company Common Stock have been issued upon the exercise of Company Options granted by the Company under the Company Option Plan and no shares of restricted Company Common Stock have been awarded under the Company Option Plan as of the date of this Agreement. Part 2.3(b) of the Disclosure Schedule accurately sets forth, with respect to each Company Restricted Stock Award: (i) the name of the holder of such Company Restricted Stock Award; (ii) the total number of shares of Company Common Stock that are subject to such Company Restricted Stock Award and the number of shares of Company Common Stock with respect to which such Company Restricted Stock Award is fully vested; (iii) the date on which such Company Restricted Stock Award was granted and the term thereof; and (iv) the vesting schedule for such Company Restricted Stock Award and whether the vesting thereof shall be subject to any acceleration in connection with the Merger or any of the other transactions contemplated by this Agreement. Each grant of a Company Option was authorized by the Board of Directors of the Company.

the grant of such Company Option was by its terms to be effective (the "Grant Date") by all necessary corporate action, each such grant was made in accordance with the terms of the Company Option Plan and the per share exercise price of each Company Option was no less than the fair market value of a share of Company Common Stock, as determined in good faith reliance on a reasonable valuation method, on the applicable Grant Date.

(c) No Other Securities. Except as set forth in Part 2.3(a), 2.3(b) or 2.3(c) of the Disclosure Schedule, and except for the conversion rights associated with the Company Preferred Stock, the rights created under the Company Stockholder Agreements, and as provided by the terms of the Company Option Plan or applicable stock grant or option agreements, there are no outstanding repurchase options, forfeiture provisions or restrictions on transfer (other than restrictions on transfer imposed by virtue of applicable federal and state securities laws). There is no: (i) outstanding subscription, option, call, convertible note, warrant or right (whether or not currently exercisable) to acquire any shares of Company Capital Stock or other securities of the Company; (ii) outstanding security, instrument or obligation that is or by its terms may become convertible into or exchangeable for any shares of Company Capital Stock (or cash based on the value of any of such shares) or other securities of the Company; or (iii) Contract under which the Company is or may by its terms become obligated to sell or otherwise issue any shares of Company Capital Stock or any other securities, including any promise or commitment to grant Company Options or other securities of the Company to an employee of or other service provider to the Company.

(d) Legal Issuance. All outstanding shares of Company Capital Stock and all outstanding Company Options were issued in compliance in all material respects with: (i) all applicable federal and state securities laws and other applicable Legal Requirements and (ii) all requirements set forth in the Contracts applicable to such shares of Company Capital Stock identified in Part 2.11(a)(xii) of the Disclosure Schedule. None of the outstanding shares of Company Capital Stock were issued in violation of any preemptive rights or other rights to subscribe for or purchase securities of the Company. Part 2.3(d) of the Disclosure Schedule accurately identifies each Company Contract relating to any securities of the Company that contains any information rights, registration rights, financial statement requirements or other terms that would survive the Closing unless terminated or amended prior to the Closing.

(e) Repurchased Shares. Part 2.3(e) of the Disclosure Schedule accurately sets forth with respect to any shares of capital stock ever repurchased or redeemed by the Company (other than repurchases from employees of the Company pursuant to customary repurchase rights in the ordinary course of business or pursuant to transactions in accordance with the Company Option Plan): (i) the name of the seller of such shares; (ii) the number, class and series of shares repurchased or redeemed; (iii) the date of such repurchase or redemption; and (iv) the price paid by the Company. All shares of capital stock of the Company ever repurchased or redeemed by the Company were repurchased or redeemed in material compliance with: (i) all applicable federal and state securities laws and other applicable Legal Requirements and (ii) all requirements set forth in the Contracts applicable to such repurchased or redeemed shares identified in Part 2.11(a)(xii) of the Disclosure Schedule.

2.4 Financial Statements and Related Information.

(a) Delivery of Financial Statements. The Company has delivered or, prior to the Closing Date will deliver to Parent or its Representatives true and complete copies of the following financial statements, including any notes and schedules thereto, in the form agreed by the Parties prior to the date hereof (collectively, the "Company Financial Statements"): (i) the audited balance sheets of the Company and the related consolidated statements of income and expenses, stockholders', and cash flows of the Company for each of the fiscal years ended as of December 31, 2012 and, December 31, 2011, together with all related notes and schedules thereto, accompanied by the reports thereon of Company's auditors, who shall be PCOAB-certified Accountants (the "Company's Audited Financial Statements") and (ii) the unaudited balance sheets as of September 30, 2013 and as of September 30, 2012, together with all related notes and schedules thereto (the "Unaudited Interim Balance Sheet" and such date, the "Unaudited Interim Balance Sheet Date") and the related consolidated statements of income and expenses, stockholders' or members' equity, as applicable, and cash flows of the Company for the year-to-date period ended on September 30, 2013 and for the corresponding year-to-date period of the prior year, together with all related notes and schedules thereto accompanied by the reports thereon of Company's auditors.

(b) Fair Presentation. The Company Financial Statements present fairly, in all material respects, the financial position of the Company as of the respective dates thereof and the results of operations and cash flows of the Company for the periods covered thereby. The Company Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered, except (i) as may be indicated in the notes thereto, and (ii) that the financial statements referred to in Section 2.4(a)(ii) do not contain footnotes and are subject to normal and recurring year-end adjustments.

2.5 Certain Liabilities.

(a) No Liabilities. Other than those reflected elsewhere in this Section 2.5, the Company has no accrued, contingent or other Liabilities, except for: (i) Liabilities identified as such and adequately reflected or reserved against in the Unaudited Interim Balance Sheet; (ii) accounts payable or accrued salaries that have been incurred by the Company since the Unaudited Interim Balance Sheet Date in the ordinary course of business and materially consistent with the Company's past practices and which are not, individually or in the aggregate, material in amount; (iii) Liabilities under the Company Material Contracts that have been incurred by the Company since the Unaudited Interim Balance Sheet Date in the ordinary course of business and materially consistent with the Company's past practices and which are not, individually or in the aggregate, material in amount; and (iv) Liabilities identified in Part 2.5(a) of the Disclosure Schedule.

(b) Indebtedness: Accounts Payable. Part 2.5(b) of the Disclosure Schedule sets forth: (i) all accounts payable of the Company as of the date of this Agreement; and (ii) all outstanding notes payable of the Company and all other Indebtedness of the Company as of the date of this Agreement.

(c) No "Off-Balance Sheet" Arrangements Neither the Company has ever effected or otherwise been a party to any "off-balance sheet arrangements" (as defined in Item 303(a)(4)(ii) of Regulation S-K under the Exchange Act). Without limiting the generality of the foregoing, the Company has not ever guaranteed any debt or other obligation of any other Person.

(d) Change of Control Fees. The Transaction Expenses and Management Cash Transaction Bonus Payments contemplated in Section 1.9 are the only fees triggered by a sale or change of control of the Company, including the transactions contemplated hereby.

2.6 Absence of Changes. Except as expressly contemplated by this Agreement or set forth in Part 2.6 of the Disclosure Schedule, since September 30, 2013:

(a) there has not been any Company Material Adverse Effect, and, to Knowledge of the Company, no event has occurred or circumstance has arisen that, in combination with any other events or circumstances, would reasonably be expected to have or result in a Company Material Adverse Effect;

(b) there has not been any material loss, damage or destruction to, or any material interruption in the use of, any of the Company's material assets (whether or not covered by insurance); and

(c) the Company has not taken any of the following actions:

(i) canceled any of its respective insurance policies identified in Part 2.17 of the Disclosure Schedule;

(ii) declared, accrued, set aside or paid any dividend or made any other distribution in respect of any shares of capital stock or other securities, nor repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities, except pursuant to transactions effected in accordance with and pursuant to the Company Option Plan;

(iii) sold, issued or authorized the issuance of: (A) any capital stock or other security, other than pursuant to the exercise of Company Options outstanding under the Company Option Plan; (B) any option or right to acquire any capital stock (or cash based on the value of capital stock) or other security; or (C) any instrument convertible into or exchangeable for any capital stock (or cash based on the value of capital stock) or other security;

(iv) amended or waived any of its rights under, or permitted the acceleration of vesting under (A) any provision of any Company Option Plan; (B) any provision of any agreement evidencing any outstanding Company Option; or (C) any provision of any restricted stock agreement;

(v) amended or permitted the adoption of any amendment to its Charter Documents, or effected or permitted the Company to become a party to any recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(vi) formed any Subsidiary or acquire any equity interest or other interest in any other Entity;

(vii) made any capital expenditure, except for such capital expenditures not exceeding \$10,000 individually or \$25,000 in the aggregate;

(viii) (A) entered into, or, except in the ordinary course of business consistent with past practice, any Contract that is or would constitute a Company Material Contract; or (B) materially amended or prematurely terminated, or waived any material right or remedy under, any such Contract;

(ix) except in the ordinary course of business and consistent with past practice, entered into any Contract: (A) that obligates the Company (or otherwise contemplates) the grant of a license in the future (whether based on the occurrence or non-occurrence of a particular event or otherwise); (B) with any Governmental Body; and (C) pursuant to which any Person is granted access to any Company IP, in each case that are not terminable by the Company (without penalty) on notice of less than 30 days;

(x) (A) acquired, leased or licensed any right or other asset from any other Person for an aggregate value in excess of \$10,000; (B) sold, leased, licensed pledged, granted, encumbered (other than Permitted Encumbrances) or otherwise disposed of any of its properties or assets which are material, individually or in the aggregate, to its business outside of the ordinary course of business; or (C) waived or relinquish any material right, in each case except in the ordinary course of business consistent with past practices;

(xi) (A) loaned money to any Person (other than routine travel advances to current employees of the Company in the ordinary course of business consistent with past practices); or (B) incurred or guaranteed any Indebtedness;

(xii) (A) materially increased benefits otherwise payable under any Company Employee Plan; (B) paid any bonus or made any profit-sharing payment, cash incentive payment or similar payment, other than commissions or bonuses paid in the ordinary course of business and consistent with past practices; (C) materially increased the amount of the wages, salary, commissions, fringe benefits or other compensation (including equity-based compensation, whether payable in cash or otherwise) or remuneration payable to any of its directors, officers or employees other than increases which the Company was obligated to make under existing agreements or with respect to employees other than directors or officers, that was in the ordinary course of business and consistent with past practices; or (D) promoted any employee or hired any new employee;

(xiii) except as required by any applicable Legal Requirement, changed any of its methods of accounting or accounting practices in any material respect;

(xiv) made or changed any material Tax election, adopted or changed a material accounting method in respect of Taxes, entered into a Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement or closing agreement (other than customary agreements not primarily related to Taxes), settled or comprised a claim, notice, audit report or assessment in respect of material Taxes, or consented to an extension or waiver of the statutory limitation period applicable to a claim or assessment in respect of Taxes;

(xv) commenced or settled any Legal Proceeding for an amount in excess of \$10,000 or that relates to any Company IP;

(xvi) agreed or committed to take any of the actions described in clauses ~~(iii)~~ through ~~(xv)~~ above.

2.7 Title to Assets.

(a) Good Title. The Company owns, and has good and legal title to, all material tangible assets (other than Intellectual Property, which is covered by Section ~~2.10~~ hereof), reflected on the Unaudited Interim Balance Sheet (all such material tangible assets being the "Company Assets"). All such Company Assets are owned by the Company free and clear of any liens or other Encumbrances, except for Permitted Encumbrances. Part 2.7(a) of the Disclosure Schedule identifies all Company Assets the individual value of which exceeds \$25,000 owned by the Company that are located at any location other than the Company Leased Real Property.

(b) Leased Assets. Part 2.7(b) of the Disclosure Schedule identifies all Company Assets that are material to the business of the Company and that are being leased to the Company for which the annual rental payment for each such Company Asset exceeds \$10,000.

2.8 Bank Accounts. Part 2.8 of the Disclosure Schedule lists with respect to each account maintained by or for the benefit of the Company at any bank or other financial institution: (a) the name of the bank or other financial institution at which such account is maintained; (b) the account number; (c) the type of account; and (d) the names of all Persons who are authorized to sign checks or other documents with respect to such account.

2.9 Equipment; Real Property.

(a) Equipment. All material items of equipment, tools, supplies, furniture, fixtures, personalty, vehicles and other tangible property owned or leased by the Company is, taken as a whole, in reasonably adequate for the uses to which it is being put and is in good operating condition and repair (ordinary wear and tear excepted).

(b) Real Property. Part 2.9(b) of the Disclosure Schedule sets forth a list of each lease pursuant to which the Company leases real property from any other Person. (All real property leased to the Company, including all buildings, structures, fixtures and other improvements leased to the Company, are referred to as the "Company Leased Real Property"). To the Knowledge of the Company, the present use and operation of the Company Leased Real Property is authorized by, and is in compliance with, in all material respects, all applicable zoning, land use, building, fire, health, labor, safety and Environmental Laws and other Legal Requirements. There is no Legal Proceeding pending, or to the Knowledge of the Company threatened, that challenges or adversely affects, or would challenge or adversely affect, the continuation of the present use or operation of any Company Leased Real Property. To the Knowledge of the Company, there is no existing plan or study by any Governmental Body or by any other Person that challenges or otherwise adversely affects the continuation of the present ownership, use or operation of any Company Leased Real Property. The Company is not a party to any subleases, licenses, occupancy agreements or other contractual obligations that grant the right of use or occupancy of any of the Company Leased Real Property to any Person other than the Company. The Company has complied in all material respects with the terms of all leases (to which it is a party) relating to the

Company Leased Real Property, and to the Knowledge of the Company, all such leases are in full force and effect in all material respects. The Company does not currently own, nor has the Company ever owned, any real property.

2.10 Intellectual Property.

(a) Registered IP. Part 2.10(a) of the Disclosure Schedule accurately identifies: (i) each item of Company Registered IP in which the Company has or purports to have an ownership interest of any nature (whether exclusively, jointly with another Person or otherwise); (ii) the jurisdiction in which such item of Company Registered IP has been registered or filed and the applicable registration or serial number; and (iii) any other Person that has an ownership interest in such item of Company Registered IP and the nature of such ownership interest.

(b) Inbound Licenses. Part 2.10(b) of the Disclosure Schedule accurately identifies each material written Contract pursuant to which any material Intellectual Property Right is or has been licensed, sold, assigned or otherwise conveyed or provided to the Company (other than: (i) agreements between the Company and its employees and consultants; and (ii) non-exclusive licenses to third-party software, online services, or other Intellectual Property that is generally made available to the public at a license fee of less than \$15,000 annually).

(c) Outbound Licenses. Part 2.10(c) of the Disclosure Schedule accurately identifies each material written Contract: pursuant to which the Company has granted to any Person (or pursuant to which the Company may be obligated in the future to grant to any Person, whether due merely to the passage of time, or due to the occurrence of an event or otherwise) any license under, or pursuant to which any Person otherwise has received or acquired from the Company (or may in the future be entitled to receive or acquire from the Company) any material right (whether or not currently exercisable and including a right to receive a license) or interest in, any material Company IP (except pursuant to (i) Contracts that do not deviate in any materially adverse respect from the Company's standard terms of sale, service, or use, (ii) non-exclusive licenses granted pursuant to Contracts that do not deviate in any materially adverse respect from the Company IP Form Contracts, (iii) Contracts that are confidentiality or nondisclosure agreements. Except for the Contracts identified or otherwise excluded from disclosure in Part 2.10(c) of the Disclosure Schedule, and except pursuant to any license agreement under which the Company is licensed to practice any Company IP, the Company is not bound by, or subject to, any Contract, containing any covenant or other provision that in any way limits or restricts the ability of the Company to use, exploit, assert or enforce any Company IP anywhere in the world.

(d) Standard Form IP Agreements. The Company has made available to Parent or its Representatives a complete and accurate copy of each standard form of Company IP Contract currently used by the Company, including each standard form of: (i) terms and conditions of sale, service or use; (ii) development agreement; (iii) employee agreement containing any assignment or license of Intellectual Property or Intellectual Property Rights or any confidentiality provision; (iv) consulting or independent contractor agreement containing any assignment or license of Intellectual Property or Intellectual Property Rights or any confidentiality provision; and (v) confidentiality or nondisclosure agreement (collectively, the "Company IP Form Contracts").

(e) Ownership Free and Clear. The Company owns all right, title and interest to and in the Company IP (other than Intellectual Property Rights licensed to the Company) free and clear of any Encumbrances (other than licenses granted pursuant to Company IP Form Contracts, the Contracts listed in or otherwise not required to be listed in Part 2.10(c) of the Disclosure Schedule, and other than the Company Material Contracts described in Section 2.11(a) hereof). For purposes of clarity, the foregoing representation and warranty excludes any subject matter covered by the representation and warranty set forth in Section 2.10(h). Without limiting the foregoing:

(i) any documents and instruments necessary to establish, perfect and maintain the ownership rights of the Company in the material Company IP that is owned by the Company (collectively, "Company-Owned IP"), including invention assignments and other assignments of Intellectual Property Rights have been validly executed, delivered, filed, and recorded in a timely manner with the appropriate Governmental Body for Company Registered IP, as applicable;

(ii) the Company has taken reasonable steps to maintain the confidentiality of all material proprietary information pertaining to the Company;

(iii) except as set forth in Part 2.10(e)(iii) of the Disclosure Schedule, no funding, facilities or personnel of any Governmental Body were used, directly or indirectly, to develop or create, in whole or in part, any Company-Owned IP and, to Knowledge of the Company, no current or former employee, officer, director, consultant or independent contractor of the Company who was involved in, or contributed to, the creation or development of any Company-Owned IP performed services for any Governmental Body, at the same time during which such employee, officer, director, consultant or independent contractor was also performing services for the Company;

(iv) to the Knowledge of Company, the Company owns or otherwise has all Intellectual Property Rights needed to conduct the business of the Company as currently conducted; and

(v) the consummation of the transactions contemplated by this Agreement will not result in the impairment of any Company IP.

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(f) Valid and Enforceable. All Company Registered IP is subsisting and enforceable, and to the Knowledge of Company, validly issued under the laws of the country that issued it. Without limiting the generality of the foregoing:

(i) to the Knowledge of the Company, no Trademark owned, used or applied for by the Company infringes any trademark or trade name owned, used or applied for by any other Person;

(ii) Part 2.10(f)(ii) of the Disclosure Schedule accurately identifies and describes each action, filing, and payment that must be taken or made on or before the date that is 90 (ninety) days after the date of this Agreement in order to maintain such item of Company Registered IP in full force and effect, excluding any response to an office action that has not been received by the Company as of the date hereof;

(iii) there are no inter partes inventorship challenges, or opposition, reexamination, inter partes nullity or interference proceedings or any other inter partes challenges pending declared, commenced or provoked or, to the Knowledge of Company, threatened, with respect to any Company IP. The Company has complied with all of its disclosure obligations and disclosure duties to the respective patent, trademark and copyright offices, including the duty of candor and disclosure to the U.S. Patent and Trademark Office, with respect to all patent, trademark and copyright applications filed by or on behalf of the Company. Other than references or prior art presented during the prosecution of any Company Registered IP, The Company has no knowledge of any information that would challenge the validity of or preclude the Company from having clear title to the Company IP or affecting the validity, patentability, or enforceability of any Company Registered IP;

(iv) if the Company previously engaged patent counsel to investigate the Company's freedom to operate using the Company Registered IP in the United States, a copy of the conclusions of the opinion has been made available to Parent or its Representatives.

(g) No Third-Party Infringement of Company IP. To the Knowledge of the Company, no Person is currently materially infringing or misappropriating any Company IP. Part 2.10(g) of the Disclosure Schedule accurately identifies (and the Company has made available to Parent or its Representatives a complete and accurate copy of) each letter or other written correspondence that has been sent by or to the Company or any Representative of the Company to a Person suspected of infringing or misappropriating any Company IP since January 1, 2008 regarding any actual, alleged, or suspected infringement or misappropriation of any Company IP, and indicates the current status of the matter referred to in such letter or correspondence.

(h) No Infringement of Third-Party IP Rights. Except as set forth in Part 2.10(h) of the Disclosure Schedule, since January 1, 2008 the Company has not received any written notice from any third party asserting or alleging that the Company has infringed or misappropriated any Intellectual Property Right of any other Person. Except as set forth on Part 2.10(h) of the Disclosure Schedule, to the Knowledge of the Company, no product of the Company infringes any Intellectual Property Right of, or contains any Intellectual Property misappropriated from, any other Person. Without limiting the foregoing, except as set forth in Part 2.10(h) of the Disclosure Schedule:

(i) no infringement, misappropriation or similar claim or Legal Proceeding is pending or has been threatened in writing and received by the Company, against the Company or against any other Person who is or may be entitled, to be indemnified, defended, held harmless or reimbursed by the Company with respect to such claim or Legal Proceeding;

(ii) since January 1, 2008, the Company has not received any written notice alleging that the Company, or any employees, officers, directors, independent contractors, or agents have misappropriated or are infringing any Intellectual Property Rights of another Person, including without limitation any Trademark, copyright, rights of publicity and privacy of any other Person;

(iii) the Company is not bound by any Contract to indemnify, defend, hold harmless or reimburse any other Person with respect to any currently pending Intellectual Property infringement, misappropriation or similar claim (other than indemnification provisions in the Company's standard forms of Company IP Contracts or in any other Contract disclosed in Part 2.10 of the Disclosure Schedule).

(i) Privacy Policies. The Company has complied at all times and in all material respects with all of the Company Privacy Policies and with all applicable Legal Requirements pertaining to privacy, User Data or Personal Data, including with respect to registration requirements. Neither the execution, delivery or performance of this Agreement nor the consummation of any of the transactions contemplated by this Agreement, nor Parent's possession or use of the User Data or any data or information in the Company Databases in compliance with the Company Privacy Policies, will result in any violation of any Company Privacy Policy or any Legal Requirement pertaining to privacy, User Data or Personal Data.

(j) To the Knowledge of Company, there has been no unauthorized or illegal use of or access to any of the data or information in any database containing (in whole or in part) any Personal Data maintained by or for the Company.

(k) Open Source Materials. Part 2.10(k) of the Disclosure Schedule sets forth a complete and correct list of all Open Source Software that has been distributed by the Company and states: (i) whether such Open Source Software has been modified by or for Company; and (ii) for all Proprietary Software that is distributed in connection with such Open Source Software, describes the interfaces between such Proprietary Software and such Open Source Software. All use and distribution of Company Offerings or any Open Source Materials by or through the Company is in full compliance with all Open Source licenses applicable thereto.

2.11 Contracts.

(a) Contracts. Part 2.11(a) of the Disclosure Schedule accurately identifies each of the following contracts and agreements of the Company as of the date hereof:

(i) (A) each Company Contract relating to the employment of, or the performance of services by, any Company Employee earning annual base compensation in excess of \$100,000; (B) any Company Contract pursuant to which the Company is obligated to make any severance, termination or similar payment to any Company Employee; and (C) any Company Contract pursuant to which the Company is obligated to make any bonus or similar payment (other than payment in respect of salary) to any Company Employee;

(ii) each Company Contract which provides for indemnification of any Company Employee or any member of the Board of Directors of the Company;

(iii) each Company Contract relating to the voting and any other rights or obligations of a stockholder of the Company in such capacity;

(iv) each material Company Contract, with obligations remaining to be performed (or liabilities continuing) after the date of this Agreement, relating to the merger, consolidation, reorganization or any similar transaction with respect to the Company;

(v) each Company Contract (other than (y) agreements between the Company and its employees and consultants, substantially in the Company's standard form thereof; and (z) non-exclusive licenses to third-party software or online services) relating to the acquisition, transfer, development or sharing of any technology, Intellectual Property or Intellectual Property Right (including any joint development agreement, collaboration agreement or similar agreement entered into by the Company);

(vi) each Company Contract relating to the acquisition, sale, spin-off or outsourcing of any business unit or operation of the Company;

(vii) each Company Contract creating or relating to any partnership or joint venture or any sharing of revenues, profits, losses, costs or liabilities;

(viii) each Company Contract imposing any restriction or requirement on the Company: (A) to compete with any other Person in any geographic area or during any period of time; (B) to acquire any product or other asset from any other Person, or to sell any product or other asset to any other Person, or to offer preferential terms to any other Person; or (C) to develop or distribute any product technology;

(ix) each Company Contract granting exclusive rights to license, market, sell or deliver any products or services of the Company or otherwise contemplating an exclusive relationship between the Company and any other Person;

(x) each Company Contract creating or involving any agency relationship, distribution or reseller arrangement or franchise relationship;

(xi) each Company Contract regarding the acquisition, issuance or transfer of any securities of the Company and each Company Contract affecting or dealing with any securities of the Company, including any restricted share agreements or escrow agreements;

(xii) each Company Contract relating to Indebtedness other than trade Indebtedness of the Company that is not material in amount;

(xiii) each Company Contract relating to the purchase or sale of any material asset (other than the Company's securities) by or to, or the performance of any services by or for, any Company Related Party;

(xiv) any Company Contract pursuant to which the Company made payments of cash or other consideration in excess of \$50,000 during the twelve months ended December 31, 2012 or that involves or contemplates the payment or delivery of cash or other consideration by the Company in an amount or having a value reasonably expected to be in excess of \$50,000 in the aggregate during the twelve month period ending December 31, 2013; and

(xv) any other Company Contract the absence of which would be reasonably expected to have a Company Material Adverse Effect.

(Contracts in the respective categories described in clauses (i) through (xv) above and all Contracts identified, or required to be identified, in Part 2.11(a) of the Disclosure Schedule are referred to in this Agreement as "Company Material Contracts.")

(b) Delivery and Status of Company Material Contracts The Company has made available to Parent or its Representatives accurate and complete copies of all written Company Material Contracts identified in Part 2.11(a) of the Disclosure Schedule, including all amendments thereto. Each Company Material Contract is in full force and effect in all material respects, and is enforceable by the Company, in accordance with its terms, subject to: (A) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (B) rules of law governing specific performance, injunctive relief and other equitable remedies.

(c) No Breach. Except as set forth in Part 2.11(c) of the Disclosure Schedule: (i) the Company has not committed any material violation or breach, and the Company has not committed any material default under, any Company Material Contract, which remains uncured, and, to the Knowledge of the Company, no other Person has committed any material violation or breach, or committed any material default under, any Company Material Contract which remains uncured; (ii) to the Knowledge of the Company, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time or both) will, or would reasonably be expected to: (A) result in a material violation or breach of any of the provisions of any Company Material Contract; (B) give any Person the right to declare a default or exercise any remedy under any Company Material Contract; (C) give any Person the right to accelerate the maturity or performance of any Company Material Contract; or (D) give any Person the right to cancel, terminate or modify any Company Material Contract; (iii) the Company has not received any written notice or to the Knowledge of the Company other communication regarding any actual or possible material violation or breach of, or material default under, any Company Material Contract that is currently in effect in any material respect, unless such violation, breach or default has been cured by the Company; and (iv) the Company has not waived any of its respective material rights under any Company Material Contract. To the Knowledge of the Company, except as set forth in Part 2.11(c) of the Disclosure Schedule, the Company has not committed any material violation or breach of Facebook's terms and conditions or terms of use.

2.12 Compliance with Legal Requirements. The Company is, and, to the Knowledge of the Company has at all times been, in compliance in all material respects with each Legal Requirement that is applicable to it or to the conduct of its business or the ownership of its assets. Except as set forth in Part 2.12(a) of the Disclosure Schedule, the Company has not received any written notice or to the Knowledge of the Company any other communication from any Person regarding any actual or possible violation of, or failure to comply with, any Legal Requirement.

2.13 Governmental Authorizations. Part 2.13(a) of the Disclosure Schedule identifies each Governmental Authorization held by the Company that is material to the operation of its business, and the Company has made available to Parent or its Representatives accurate and complete copies of all Governmental Authorizations identified in Part 2.13(a) of the Disclosure Schedule. The Governmental Authorizations identified in Part 2.13(a) of the Disclosure Schedule are valid and in full force and effect, and collectively constitute all Governmental Authorizations necessary to enable the Company to conduct its business in the manner in which its business is currently being conducted in all material respects. The Company is in material compliance with the terms and requirements of the respective Governmental Authorizations identified in Part 2.13(a) of the Disclosure Schedule. The Company has not received any written notice from any Governmental Body regarding: (i) any actual or possible violation of or failure to comply with any material term or requirement of any Governmental Authorization listed or required to be listed in Part 2.13(a) of the Disclosure Schedule; or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization listed or required to be listed in Part 2.13(a) of the Disclosure Schedule.

2.14 Tax Matters.

(a) Tax Returns and Payments. All material Tax Returns required to be filed by or on behalf of the Company for taxable periods ending on or before the Closing Date have been timely and properly filed and are true, accurate and complete in all material respect. All material Taxes (whether or not shown on any Tax Return) of the Company that are due and payable have been timely and properly paid. All Taxes required to be collected or withheld (including with respect to any employee, creditor, independent creditor, shareholder or other third party) by the Company have been properly and timely collected or withheld and remitted to the proper Governmental Body. The Company has made available to Parent or its Representatives accurate and complete copies of all Tax Returns filed by the Company within the past four (4) years and related examination reports and statements of deficiencies assessed against or agreed to by the Company. No claim has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. The Company Financial Statements properly and adequately accrue or reserve for Tax liabilities in accordance with GAAP.

(b) Audits; Claims. Except as set forth in Part 2.14(b) of the Disclosure Schedule, no Tax Return of the Company has ever been examined or audited by any Governmental Body and there are no pending audits or examinations relating to Taxes or any Tax Returns of the Company of which the Company has received written notice or otherwise has Knowledge. The Company has not received from any Governmental Body any notice or otherwise has Knowledge of any: (i) intent to open an audit or other review relating to any Taxes or Tax Returns of the Company; (ii) request for information related to Tax matters; (iii) deficiency or proposed Tax adjustment that has not been resolved and paid in full; or (iv) threatened or proposed audit or examinations relating to Taxes or any Tax Returns of the Company. No extension or waiver of the limitation period applicable to any Tax or Tax Returns has been granted by or requested from the Company. No written (or to the Knowledge of the Company, other) claim or Legal Proceeding is pending or threatened against the Company in respect of any Tax. There are no liens for Taxes upon any of the assets of the Company except liens for current Taxes not yet due and payable (and for which there are adequate accruals, in accordance with GAAP).

(c) Parachute Payments. Except as set forth in Part 2.14(c) of the Disclosure Schedule, the Company is not a party to any Contract that has resulted or would reasonably be expected to result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax law) in connection with the transactions contemplated by this Agreement.

(d) Closing Agreements; Etc. The Company is not a party to, is not bound by or does not have any obligation under any Tax allocation or sharing agreement, tax indemnity or similar agreement (except for customary agreements not primarily related to Taxes). The Company has not: (i) ever been a member of an "affiliated group" (within the meaning of Section 1504 of the Code) or combined or unitary group of which the Company was not the ultimate parent corporation; or (ii) any Liability for the Taxes of any Person (other than the Company or pursuant to customary agreements not primarily related to Taxes).

(e) Distributed Stock. The Company has not distributed stock of another Person and the Company has not 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.

(f) Tax Holidays. There are no (and there have never been any) Tax exemptions, Tax holidays or other Tax reduction agreements or arrangements applicable to the Company.

(g) Net Operating Losses. The Company has made available to Parent all information reasonably available to the Company that is reasonably necessary for Parent to determine whether there has been any change in ownership of the Company within the meaning of Section 382(g) of the Code since the earliest date of incorporation of the Company or any of its predecessors.

(h) Adjustment in Taxable Income. The Company is not currently, and the Company will not, for any period for which a Tax Return has not been filed, be required to include in any taxable period (or portion thereof) ending after the Closing Date taxable income attributable to income that accrued in a prior taxable period but was not recognized in a prior taxable period as a result of the installment method of accounting, the completed contract method of accounting, the long-term contract method of accounting, the cash method of accounting or pursuant to Section 481 or 263A of the Code (or any comparable provision under state, local or foreign Tax laws) or for any other reason.

(i) Penalties. The Company has not disclosed on its Tax Returns any Tax reporting position taken in any Tax Return which would result in the imposition of penalties under Section 6662 of the Code (or any comparable provisions of state, local or foreign law).

(j) Tax Shelter and Listed Transactions. The Company has not consummated or participated in, and the Company is not currently participating in, any transaction which was or is a "Tax shelter" transaction as defined in Sections 6662 or 6111 of the Code or the Treasury Regulations promulgated thereunder. The Company has not participated in, and the Company is not currently participating in, a "Listed Transaction" or a "Reportable Transaction" within the meaning of Section 6707A(c) of the Code or Treasury Regulation Section 1.6011-4(b), or any transaction requiring disclosure under a corresponding or similar provision of state, local, or foreign law.

(k) Transferee or Successor Tax Liability. The Company has no Liability for the Taxes of any Person under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign law) as a transferee or successor, by Contract (except for customary agreements not primarily related to Taxes) or otherwise.

(l) Dual Consolidated Loss. The Company has not incurred a dual consolidated loss within the meaning of Section 1503 of the Code.

(m) Foreign Tax. The Company has in its possession official foreign government receipts for any Taxes paid by it to any foreign Tax authorities.

(n) FIRPTA. The Company is not, and the Company has never been a "United States real property holding corporation" within the meaning of Section 897 of the Code during the period specified in Section 897(c)(1)(A)(ii) of the Code, and the Company has filed with the Internal Revenue Service all statements, if any, which are required under Section 1.897-2(h) of the Treasury Regulations.

2.15 Employee and Labor Matters; Benefit Plans.

(a) Employee List. Part 2.15(a) of the Disclosure Schedule contains a list of all current Company Employees as of the date of this Agreement, and correctly reflects: (i) their dates of employment; (ii) their current positions; (iii) their current salaries; and (iv) any other compensation payable to them (including housing allowances, compensation payable pursuant to bonus, deferred compensation or commission arrangements or other compensation). The Company is not, and the Company has not ever been, bound by or a party to, and the Company does not have a duty to bargain for, any collective bargaining agreement or other Contract with a labor organization representing any Company Employees and there are no labor organizations representing, or, to the Knowledge of the Company, purporting to represent or seeking to represent any current Company Employees. The Company is not engaged, and the Company has not ever been engaged, in any unfair labor practice of any nature which would be reasonably likely to result in a material Liability to the Company. The Company has not had any strike, slowdown, work stoppage, lockout, job action or threat thereof, or question concerning representation, by or with respect to any of the Company Employees. No event has occurred, and no condition or circumstance exists, that would reasonably be expected to directly or indirectly give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout, job action, labor dispute or union organizing activity or any similar activity or dispute.

(b) Leave of Absence. Except as set forth in Part 2.15(b) of the Disclosure Schedule, there is no current Company Employee who is not fully available to perform work because of disability or other leave.

(c) At Will Employment. Except as set forth in Part 2.15(c) of the Disclosure Schedule, the employment of each of the current Company Employees is terminable by the Company at will. The Company has made available to Parent or its Representatives accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and

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other materials relating to the employment of the Company Employees.

(d) Employee Departures/Restrictions. To the Knowledge of the Company, no employee of the Company at the level of vice president or above: (i) intends to terminate his employment with the Company; (ii) has received an offer to join a business that may be competitive with the Company's business; or (iii) is a party to or is bound by any confidentiality agreement, noncompetition agreement or other Contract (with any Person) that may have an adverse effect on: (A) the performance by such employee of any of his duties or responsibilities as an employee of the Company; or (B) the Company's businesses or operations.

(e) Employee Plans and Agreements. Part 2.15(e) of the Disclosure Schedule contains an accurate and complete list of each Company Employee Plan and each Company Employee Agreement. The Company does not intend (and the Company has not committed) to establish or enter into any new Company Employee Plan or Company Employee Agreement, or to modify any Company Employee Plan or Company Employee Agreement (except to conform any such Company Employee Plan or Company Employee Agreement to the requirements of any applicable Legal Requirements, the annual renewal of any Company Employee Plan in the ordinary course of business consistent with past practice or as required by this Agreement).

(f) Delivery of Documents. As applicable with respect to each Company Employee Plan, the Company has made available to Parent or its Representatives: (i) correct and complete copies of all documents setting forth the terms of each Company Employee Plan and each Company Employee Agreement, as currently in effect, and all related trust documents; (ii) the most recent summary plan description together with the summaries of material modifications thereto, if any, with respect to each Company Employee Plan; (iii) all material written Contracts relating to each Company Employee Plan, including administrative service agreements and group insurance contracts; (iv) the annual reports (Form 5500 series) for the last three complete plan years; (v) the most recent letter of determination from the U.S. Internal Revenue Service relating to the tax-qualified status of the Company Employee Plan, if applicable; (vi) all written materials provided during the last three years to any Company Employee relating to any Company Employee Plan and any proposed Company Employee Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events that would result in any material Liability to the Company and which differ materially from the information contained in the other materials provided under this Section 2.15(f); (vii) all correspondence to or from any Governmental Body relating to any Company Employee Plan during the last three years; and (viii) all insurance policies in the possession of the Company pertaining to fiduciary liability insurance covering the fiduciaries for each Company Employee Plan.

(g) No Foreign Plans. The Company has not established or maintained: (i) any plan, program, policy, practice, Contract or other arrangement mandated by a Governmental Body other than the United States; (ii) any Company Employee Plan that is subject to any of the Legal Requirements of any jurisdiction outside of the United States; or (iii) any Company Employee Plan that covers or has covered Company Employees whose services are or have been performed primarily outside of the United States.

(h) Absence of Certain Retiree Liabilities. The Company has not ever represented, promised or contracted (whether in oral or written form) to any Company Employee (either individually or to Company Employees as a group) or any other Person that such Company Employee(s) or other Person would be provided with retiree life insurance, retiree health benefit or other retiree employee welfare benefits, except (i) to the extent required by applicable Legal Requirements, (ii) benefits through the end of the month of termination of employment, (iii) death benefits attributable to deaths occurring at or prior to termination of employment, (iv) disability benefits attributable to disabilities occurring at or prior to termination of employment, and (v) conversion rights.

(i) No Defaults. The Company has performed all material obligations required to be performed by it under each Company Employee Plan and is not in material default or violation of, and the Company has no Knowledge of any material default or violation by any other party to, the terms of any Company Employee Plan. Each of the Company Employee Plans has been operated and administered in all material respects in accordance with applicable Legal Requirements, including, without limitation, the applicable requirements under the Code and ERISA. Each Company Employee Agreement that is subject to Code Section 409A(a) has been drafted and administered in good faith compliance with, or has been corrected in good faith reliance upon guidance promulgated under, Section 409A of the Code and the regulations promulgated thereunder. All premiums and/or contributions to, and payments from, any Company Employee Plan which may have been required to be made in accordance with the terms of such Company Employee Plan or applicable Legal Requirements have been timely made, and all material contributions for any period ending on or before the Closing Date which are not yet due, but will be paid on or prior to the Closing Date, are reflected as an accrued Liability on the Unaudited Interim Financial Statements to the extent required by GAAP. Each Company Employee Plan can be amended, terminated or otherwise discontinued after the date of this Agreement, without material Liability to the Company, the Surviving Corporation or to Parent (other than ordinary administration expenses and benefits that have accrued as of the date of the amendment, termination or discontinuance). There are no audits, inquiries or Legal Proceedings pending or, to the Knowledge of the Company, threatened by any Governmental Body with respect to any Company Employee Plan. All material reports, returns and similar documents required to be filed with any Governmental Body or distributed to any plan participant have been duly and timely filed or distributed. Neither the Company nor to the Knowledge of the Company, any other Person has engaged in a nonexempt "prohibited transaction," within the meaning of Section 406 of ERISA or Section 4975 of the Code with respect to any Company Employee Plan and which would result in a material Liability to the Company. With respect to each Company Employee Plan that is a group health plan, the Company has complied with the notice and continuation coverage requirements, and all other requirements, of Section 4980B of the Code and Parts 6 and 7 of Title I of ERISA, and the regulations thereunder, except for such noncompliance as would not result in a material Liability to the Company.

(j) Qualified Plans. Except as set forth in Part 2.15(j) of the Disclosure Schedule, with respect to each Company Employee Plan intended to qualify under Section 401(a) of the Code: (i) the Internal Revenue Service has issued a favorable determination letter or opinion letter or advisory letter upon which the Company is entitled to rely under Internal Revenue Service pronouncements, with respect to such plan's qualified status under Section 401(a) of the Code; (ii) no such determination letter, opinion letter or advisory letter has been revoked nor, to the Knowledge of the Company, has revocation been threatened, nor to the

Knowledge of the Company has any amendment or other action or omission occurred with respect to any such plan since the date of its most recent determination letter, opinion letter or advisory letter, or application therefor, in any respect which would reasonably be expected to adversely affect its qualification; and (iii) no Company Employee Plan is or has ever been a defined benefit plan subject to Section 412 of the Code and Section 302 of ERISA, a multiemployer plan as defined in Section 4001(a)(3) of ERISA, and/or a multiple employer plan subject to Section 413(c) of the Code.

(k) No Conflict. Except as set forth in Part 2.15(k) of the Disclosure Schedule or as required by applicable Legal Requirements, including, without limitation, Section 411(d)(3) of the Code, neither the execution, delivery or performance of this Agreement, nor the consummation of the Merger or any of the other transactions contemplated by this Agreement, will or may (either alone or upon the occurrence of any additional or subsequent events): (i) constitute an event under any Company Employee Plan, Company Employee Agreement, trust or loan that will or may result (either alone or in connection with any other circumstance or event) in any payment (whether of severance pay or otherwise), acceleration, forgiveness of Indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Company Employee, except as otherwise set forth on Part 2.3(b) of the Disclosure Schedule; or (ii) create or otherwise result in a material Liability with respect to any Company Employee Plan.

(l) Compliance. The Company (i) is in compliance in all material respects with all applicable Legal Requirements, Contracts and orders, rulings, decrees, judgments or arbitration awards of any arbitrator or any court or other Governmental Body respecting employment, employment practices, terms and conditions of employment, wages, hours or other labor-related matters, including Legal Requirements, orders, rulings, decrees, judgments and awards relating to discrimination, wages and hours, labor relations, leave of absence requirements, occupational health and safety, privacy, harassment, retaliation, immigration, wrongful discharge or violation of the personal rights of Company Employees or prospective employees; (ii) has no Liability for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing; and (iii) has no Liability for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Body with respect to unemployment compensation benefits, social security or other benefits or obligations for any Company Employee (other than routine payments to be made in the normal course of business and consistent with past practice).

(m) Claims Against Plans. There are no pending or, to the Knowledge of the Company, threatened claims or Legal Proceedings against any of the Company Employee Plans, the assets of any of the Company Employee Plans, nor, to the Knowledge of the Company, is any Legal Proceeding pending or threatened against the Company Employee Plan administrator or any fiduciary of the Company Employee Plans with respect to the operation of such Company Employee Plans (other than routine benefit claims, appeals of such claims and domestic relations order proceedings) or asserting any rights or claims to benefits under such Company Employee Plan, and, to the Knowledge of the Company, there are no facts or circumstances which would form a reasonable basis for any such claims or Legal Proceedings.

(n) Independent Contractors. Part 2.15(n) of the Disclosure Schedule accurately sets forth, with respect to each Person who is or was: (x) at any time, an independent contractor of the Company or any of its Subsidiaries who contributed to the development of any Company IP; and (y) at any time since January 1, 2012, an independent contractor of the Company:

(i) the name of such independent contractor, and the date as of which such independent contractor was originally engaged by the Company;

(ii) a description of such independent contractor's performance objectives, services, duties and responsibilities;

(iii) the aggregate dollar amount of the compensation (including all payments or benefits of any type) received by such independent contractor from the Company with respect to services performed in the current fiscal year;

(iv) the terms of compensation of such independent contractor; and

(v) any Governmental Authorization that is held by such independent contractor and that relates to the business of the Company.

2.16 Environmental Matters. The Company is in compliance with all applicable Environmental Laws, which compliance includes the possession by the Company of all material Environmental Licenses and other Governmental Authorizations required under applicable Environmental Laws for the operation of its business and use of the Company Leased Real Property, and compliance with the terms and conditions thereof, except where the failure to so comply has not had, and would not reasonably be expected to have, a Company Material Adverse Effect. The Company has not received any written notice or the Knowledge of the Company any other communication from a Governmental Body that alleges that the Company is not in material compliance with any Environmental Law.

2.17 Insurance. Part 2.17 of the Disclosure Schedule identifies each insurance policy maintained by, at the expense of or for the benefit of the Company as of the date of this Agreement and identifies any material claims made thereunder as of the date of this Agreement within the past three (3) years. The Company has made available to Parent or its Representatives accurate and complete copies of the insurance policies identified on Part 2.17 of the Disclosure Schedule. All premiums due on such policies have been paid, and the Company is otherwise in compliance with the terms of such policies. Since December 31, 2012, the Company has not received any written notice or to the Knowledge of the Company any other communication regarding any actual or possible: (i) cancellation or invalidation of any insurance policy; (ii) refusal of any coverage or rejection of any material claim under any insurance policy; or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy.

2.18 Related Party Transactions.

(a) Except as set forth in Part 2.18 of the Disclosure Schedule: (a) no Company Related Party, and to the Knowledge of the Company, no immediate family member of a Company Related Party, has and no Company Related Party and, to the Knowledge of the Company no immediate family member of a Company Related Party, has had, any direct interest or, to the Knowledge of the Company any indirect interest, in any material asset used in the business of the Company except for any interest resulting from the ownership of shares of the Company Capital Stock; (b) no Company Related Party and no immediate family member of a Company Related Party is indebted to the Company (other than for ordinary trade payables); (c) no Company Related

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Party and no immediate family member of a Company Related Party has entered into, or, to the Knowledge of the Company, has had any financial interest in, any material Contract or transaction involving the Company (other than standard employment agreements and transactions involving the Company's securities); and (d) to the Knowledge of the Company, no Company Related Party and no immediate family member of a Company Related Party has any claim or right against the Company (other than rights under Company Options and rights to receive compensation for services performed as an employee of the Company or as a consultant to the Company pursuant to a written consulting agreement or other rights arising in the ordinary course of employment or pursuant to a written consulting agreement).

(b) To Knowledge of the Company, except as set forth in Part 2.18 of the Disclosure Schedule, no Company Related Party has any direct or indirect financial interest in any competitor or customer of the Company; provided, however, that the ownership of securities representing no more than 5% of the outstanding voting power of any creditor, competitor, agent, representative or customer, and which are listed on any national securities exchange or traded actively in the national over-the-counter market, shall not be deemed to be a "financial interest" as long as the Person owning such securities has no other connection or relationship with such creditor, competitor, supplier manufacturer, agent, representative, distributor or customer and has not filed a report on Schedule 13D or 13G or Form 3 or 4 relating to such entity.

2.19 Legal Proceedings; Orders.

(a) Legal Proceedings. There is no pending Legal Proceeding and, to the Knowledge of the Company, no Person has threatened to commence any Legal Proceeding: (i) that involves the Company or any of the assets owned or used by the Company or any Person whose Liability the Company has retained or assumed, either contractually or by operation of law; (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement; or (iii) that relates to the ownership of any capital stock of the Company, or any option or other right to the capital stock of the Company, or right to receive consideration as a result of this Agreement. Except as set forth in Part 2.19(a) of the Disclosure Schedule, no Legal Proceeding involving claims in excess of \$50,000 has ever been commenced by, and no Legal Proceeding involving claims in excess of \$100,000 has ever been pending against, the Company.

(b) Orders. There is no Order to which the Company, or any of the material assets owned or used by the Company is subject. To the Knowledge of the Company, no officer or other employee of the Company is subject to any order, writ, injunction, judgment or decree that prohibits such officer or other employee from engaging in the Company's businesses.

2.20 Authority; Binding Nature of Agreement.

(a) Power and Authority. Each of the Company and the Seller Parties has all requisite corporate power and authority to enter into this Agreement, and, subject to the receipt of the Company Stockholder Approval, to perform its obligations under this Agreement and consummate the Merger and other transactions contemplated hereby. The execution and delivery of this Agreement by each of the Company and, subject to obtaining the Company Stockholder Approval, and the Seller Parties, and the performance by the each of the Company and the Seller Parties of its respective obligations hereunder and the consummation by each of the Company and the Seller Parties of the Merger and other transactions contemplated hereby, have been duly authorized by all necessary corporate action on the part of the Company or such Seller Party, as applicable, and its respective board of directors or other governing body, and no other corporate proceedings on the part of the Company or such Seller Party are necessary to authorize this Agreement or to consummate the transactions contemplated hereby, except as set forth in Sections 2.21(b) and 2.22. This Agreement has been duly executed and delivered by the Company and each Seller Party and constitutes the legal, valid and binding obligation of the Company and such Seller Parties, enforceable against it in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) Board Approval. The Company Board has (i) unanimously determined that the Merger is advisable and fair and in the best interests of the Company and its stockholders; (ii) unanimously recommended the adoption of this Agreement by the holders of Company Capital Stock and directed that this Agreement and the Merger be submitted for consideration by the Company's stockholders; and (iii) to the extent necessary, adopted a resolution having the effect of causing the Company not to be subject to any state takeover law or similar Legal Requirement that might otherwise apply to the Merger or any of the other transactions contemplated by this Agreement.

2.21 Non-Contravention; Consents.

(a) Except as set forth in Part 2.21 of the Disclosure Schedule, the execution and delivery of this Agreement by each of the Company and the Seller Parties do not, and the performance by each of the Company and the Seller Parties of its obligations hereunder and the consummation by each of the Company and the Seller Parties of the Merger and other transactions contemplated hereby will not:

(i) contravene, conflict with or result in a violation of any of the provisions of the Company's Charter Documents;

(ii) assuming that all consents, approvals and authorizations and other actions described in Section 2.21(b) have been obtained and all filings and obligations described in Section 2.21(b) have been made or complied with, conflict with or violate in any material respect any Legal Requirement applicable to the Company or any order, writ, injunction, judgment or decree to which the Company or any of the assets owned or used by the Company, is subject;

(iii) contravene, conflict with or result in a violation of any of the Legal Requirements, or require any

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Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by the Company and that is material to the operation of the Company's business;

(iv) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Company Contract that is or would constitute a Company Material Contract in any material respect, or give any Person the right to: (A) declare a default or exercise any remedy under any such Company Material Contract; (B) accelerate the maturity or performance of any such Company Material Contract; or (C) cancel, terminate or materially modify any such Company Material Contract;

(v) result in the imposition or creation of any lien or other Encumbrance (other than Permitted Encumbrances) upon or with respect to any material asset owned by the Company; or

(vi) except as set forth in paragraph (b) or Section 2.22 below, require the Consent of any Person.

(b) The execution and delivery of this Agreement by each of the Company and the Seller Parties do not, and the performance of this Agreement by each of the Company and the Seller Parties will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Body, except for applicable requirements, if any, of the Exchange Act, state securities or "blue sky" laws and the filing and recordation of the Certificate of Merger with the Secretary of State of the State of Delaware.

2.22 Vote Required. The affirmative vote of (a) the holders of a majority of the shares of Company Capital Stock (voting together as a single class on an as-converted basis); and (b) the holders of at least a majority of the Company Preferred Stock (voting together as a single class, and not as separate series, and on an as converted basis) are the only votes of the holders of any class or series of Company Capital Stock necessary to adopt this Agreement and approve the other transactions contemplated by this Agreement (the votes referred to in clauses "(a)" and "(b)" of this sentence being referred to collectively as the "Required Merger Stockholder Votes").

2.23 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company, except as set forth in Part 2.23 of the Disclosure Schedule. Except as set forth in Part 2.23 of the Disclosure Schedule, no Person is or may become entitled to receive any fee or other amount from the Company for professional services performed or to be performed in connection with the Merger or any of the other transactions contemplated by this Agreement.

2.24 Users. The numbers of monthly unique visitors (distinct individuals) for the U.S. and outside the U.S., for mobile and non-mobile visitors, as reported by comScore, Google Analytics and the Company's internal measurements, are set forth on Part 2.24 of the Disclosure Schedule. Except as set forth in Part 2.24 of the Disclosure Schedule, to the Knowledge of the Company, these numbers accurately capture and report the Company's true unique visitors in each of those categories.

2.25 Disclaimer of Other Representations and Warranties; Knowledge

(a) NEITHER THE COMPANY NOR ANY OF THE SELLER PARTIES, NOR ANY AFFILIATE THEREOF, NOR ANY OF THEIR RESPECTIVE REPRESENTATIVES, HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO THE COMPANY OR ITS BUSINESS OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS ARTICLE 2.

(b) Without limiting the generality of the foregoing, neither the Company nor any of the Seller Parties nor any of their respective Representatives has made, and shall not be deemed to have made, any representations or warranties in the materials relating to the business of the Company made available to Parent and Merger Sub (or their respective Representatives), including due diligence materials, or in any presentation of the business of the Company by management of the Company or others in connection with the transactions contemplated hereby, and no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder or otherwise or deemed to be relied upon by Parent or Merger Sub in executing, delivering and performing this Agreement and the transactions contemplated hereby. It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, including but not limited to, any offering memorandum or similar materials made available by the Company or any of the Seller Parties or any of their respective Representatives are not and shall not be deemed to be or to include representations or warranties of the Company or the Seller Parties, and are not and shall not be deemed to be relied upon by Parent or Merger Sub in executing, delivering and performing this Agreement and the transactions contemplated hereby.

3. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the Parent SEC Documents filed by Parent on or after December 31, 2012 and on or prior to the date that is two (2) Business Days prior to the date of this Agreement, or as specified in disclosure schedules delivered by the Parent concurrently with the execution of this Agreement to Parent and Merger Sub (the "Parent Disclosure Schedules"), which shall identify

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any exceptions to the representations, warranties and covenants contained in this Agreement (with specific reference to the particular Section or subsection to which such information relates; provided, however, that any information set forth in one section of such Parent Disclosure Schedule also shall be deemed to apply to each other section and subsection of this Agreement to which its relevance is reasonably apparent), Parent and Merger Sub jointly and severally represent and warrant to the Company as follows:

3.1 Due Organization.

(a) Parent. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to perform its material obligations under all Parent Material Contracts. Parent is duly qualified to do business as a foreign corporation, and is in good standing, under the laws of all jurisdictions where the property owned, leased or operated by it or the nature of its business requires such qualification and where the failure to be so qualified will or would reasonably be expected to have or result in a Parent Material Adverse Effect. Part 3.1(a) of the Disclosure Schedule accurately sets forth each jurisdiction where Parent is qualified to do business as a foreign corporation.

(b) Merger Sub. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The certificate of incorporation and bylaws of Merger Sub, copies of which have previously been made available to the Company or its Representatives, are accurate and complete copies of such documents as currently in effect and Merger Sub is not in violation of any provision thereof.

3.2 Non-Contravention; Consents.

(a) Non-Contravention. Except as set forth in Part 3.2 of the Parent Disclosure Schedule, the execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance by Parent and Merger Sub of their obligations hereunder and the consummation by Parent and Merger Sub of the Merger and other transactions contemplated hereby will not:

(i) contravene, conflict with or result in a violation of any of the provisions of Parent's articles of incorporation or bylaws;

(ii) contravene, conflict with or result in a violation of any of the provisions of the certificate of incorporation or bylaws of Merger Sub;

(iii) assuming that all consents, approvals and authorizations and other actions described in Section 3.2(b) have been obtained and all filings and obligations described in Section 3.2(b) have been made or complied with, conflict with or violate in any material respect any Legal Requirement applicable to Parent or Merger Sub or any order, writ, injunction, judgment or decree to which Parent, any of its Subsidiaries or any of the assets owned or used by Parent or any of its Subsidiaries, is subject; or

(iv) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Parent or any of its Subsidiaries that is material to the operation of Parent's business;

except, in the case of clauses (iii) and (iv) above, for any such conflicts, violations, defaults or occurrences, if any, that would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect or impair in any material respect the ability of the parties hereto to consummate the Merger or other transactions contemplated hereby.

(b) Consents. The execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance of this Agreement by Parent and Merger Sub will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Body, except for applicable requirements, if any, of the Securities Act, the Exchange Act, state securities or "blue sky" laws and the filing and recordation of the Certificate of Merger with the Secretary of State of the State of Delaware.

3.3 Authority; Binding Nature of Agreement Parent and Merger Sub each have the requisite corporate power and authority to enter into and perform their obligations under this Agreement and consummate the Merger and other transactions contemplated hereby. The execution and delivery of this Agreement by Parent and Merger Sub and the performance by Parent and Merger Sub of their respective obligations hereunder and the consummation of the Merger and other transactions contemplated hereby, have been duly authorized by all necessary corporate or limited liability company action, as applicable, on the part of Parent and Merger Sub and their respective boards of directors or members, as the case may be, except as set forth in Sections 3.2(b) and 3.9. This Agreement has been duly executed and delivered by Parent and Merger Sub and constitutes a valid and binding obligation of Parent and Merger Sub, as the case may be, enforceable against them in accordance with its terms, subject to: (a) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

3.4 Legal Proceedings. There is no pending Legal Proceeding and, to the Knowledge of Parent and Merger Sub, no Person has threatened to commence any Legal Proceeding that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement.

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(a) Parent SEC Documents. Parent has filed all forms, reports and documents required to be filed by it with the SEC since January 1, 2012 (the forms, reports and documents filed since January 1, 2012 and those filed subsequent to the date hereof, including any amendments thereto, collectively, the "Parent SEC Documents"). Each of the Parent SEC Documents (i) at the time of its filing complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder applicable to the Parent SEC Documents or, if not yet filed or furnished, will comply in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder applicable to the Parent SEC Documents and (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated in such Parent SEC Documents or necessary in order to make the statements in such Parent SEC Documents, in the light of the circumstances under which they were made, not misleading.

(b) SEC Comment Letters. As of the date of this Agreement, Parent has timely responded to all comment letters of the staff of the SEC relating to the Parent SEC Documents, and the SEC has not advised Parent that any final responses are inadequate, insufficient or otherwise non-responsive. Except as set forth in Part 3.5(b) of the Parent Disclosure Schedule, to the knowledge of Parent, as of the date of this Agreement, none of the Parent SEC Documents is the subject of ongoing SEC review or outstanding SEC comment.

(c) Financial Statements. Each of the consolidated financial statements (including, in each case, any notes or schedules thereto) included in or incorporated by reference into the Parent SEC Documents complied or will comply as to form in all material respects with the applicable published rules and regulations of the SEC with respect thereto, was prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of Parent as at the respective dates thereof and for the respective periods indicated therein, or, in the case of the Parent SEC Documents filed after the date hereof, will fairly present, in all material respects, the consolidated financial position, results of operations and cash flows of Parent as at the respective dates thereof and for the respective periods indicated therein (subject, in the case of unaudited statements, to normal and recurring year-end adjustments which have not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Parent) (the "Parent Financial Statements").

3.6 Capitalization of Parent

(a) Authorized and Outstanding Securities. As of the date hereof, the authorized capital stock of Parent consists of (i) 300,000,000 shares of Parent Common Stock, (ii) 100,000 shares of Series A preferred stock, par value \$0.001 per share ("Parent Series A Preferred Stock"), and (iii) 50,000 shares of Series B preferred stock, par value \$0.001 per share ("Parent Series B Preferred Stock"), and together with the Parent Series A Preferred Stock, the "Parent Preferred Stock"). As of the date of this Agreement, 74,656,683 shares of Parent Common Stock are issued and outstanding, all of which are validly issued, fully paid and non-assessable. Parent has reserved 30,000,000 shares of Parent Common Stock for issuance under Parent's 2011 Executive Incentive Plan (the "Parent Incentive Plan"), of which (x) options to purchase 17,517,049 shares of Parent Common Stock are currently outstanding and (y) restricted stock units representing 1,840,000 shares of Parent Common Stock are outstanding as of the date of this Agreement. Parent has reserved 36,228,636 shares of Parent Common Stock for issuance under warrants to purchase Parent Common Stock outstanding as of the date hereof (the "Parent Warrants"). As of the date of this Agreement, 34,275 shares of Parent Series A Preferred Stock and 21,803.5 shares of Parent Series B Preferred Stock are issued and outstanding, all of which are validly issued, fully paid and non-assessable. Except as set forth in this Section 3.6 and except for stock options granted pursuant to the Parent Incentive Plan and the Parent Warrants set forth in Part 3.6 of the Parent Disclosure Schedule, there are no options, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of Parent or Merger Sub or obligating Parent or Merger Sub to issue or sell any shares of capital stock of, or other equity interests in, Parent or Merger Sub. All shares of Parent Common Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, and all shares of Parent Common Stock issued pursuant to this Agreement, will be duly authorized, validly issued, fully paid and non-assessable. There are no outstanding contractual obligations of Parent or Merger Sub to repurchase, redeem or otherwise acquire any shares of Parent Common Stock or any capital stock of Merger Sub.

(b) No Other Securities. Except as set forth in Section 3.6(a) or Part 3.6(b) of the Parent Disclosure Schedule, except for stock options granted pursuant to the Parent Incentive Plan and in connection with the transactions contemplated hereby, except for this Agreement and the Stockholders Agreement and except for any Parent Restricted Stock Units granted pursuant to Section 4.1(c) hereof, there is no (i) outstanding security, instrument or obligation that is or by its terms may become convertible into or exchangeable for any shares of Parent Capital Stock (or cash based on the value of any of such shares) or other securities of the Parent or Merger Sub or (ii) Contract under which Parent or Merger Sub is or may by its terms become obligated to sell or otherwise issue any shares of Parent Capital Stock or any other securities, including any promise or commitment to grant Parent Options or other securities of Parent or Merger Sub to an employee of or other service provider to Parent or Merger Sub.

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3.7 Capitalization of Merger Sub. As of the date of this Agreement, the authorized capital stock of Merger Sub consists of 100 shares of common stock, no par value per share ("Merger Sub Common Stock"). As of the date of this Agreement, 100 shares of Merger Sub Common Stock were issued and outstanding. All of the outstanding shares of Merger Sub Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable and are owned, beneficially and of record, by Parent, free and clear of any claim, lien, Encumbrance, or agreement with respect thereto.

3.8 Valid Issuance. The Parent Common Stock to be issued in the Merger have been duly and validly reserved for issuance, and will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable.

3.9 Operations of Merger Sub. Merger Sub is a direct, wholly owned subsidiary of Parent, was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement.

3.10 Consent Required. No consent of any holders of any class or series of capital stock of Parent is required or necessary to enter into the Transaction Documents to which it is a party or to consummate the transactions contemplated hereby and thereby.

3.11 Certain Liabilities. Neither Parent nor any of its Subsidiaries has accrued, contingent or other Liabilities that would be required to be included in the Parent Financial Statements, except for: (i) those Liabilities that are reflected or reserved against on the consolidated balance sheet of Parent as of June 30, 2013 contained in the Annual Report on Form 10-K of Parent for the period ended June 30, 2013, as amended through the date hereof, filed with the SEC (the "Parent Balance Sheet"); (ii) accounts payable or accrued salaries that have been incurred by Parent and each of its Subsidiaries since June 30, 2013 in the ordinary course of business and materially consistent with Parent's and each of its Subsidiaries' past practices; (iii) Liabilities identified in Part 3.11 of the Parent Disclosure Schedule; and (iv) Liabilities that individually or in the aggregate would not be material to Parent and its Subsidiaries taken as a whole. Neither Parent nor any of its Subsidiaries has ever effected or otherwise been a party to any "off-balance sheet arrangements" (as defined in Item 303(a)(4)(ii) of Regulation S-K under the Exchange Act). Without limiting the generality of the foregoing, neither Parent nor any of its Subsidiaries has ever guaranteed any debt or other obligation of any other Person.

3.12 Compliance with Legal Requirements. Parent and each of its Subsidiaries is, and, to the Knowledge of Parent, has at all times been, in compliance in all material respects with each Legal Requirement that is applicable to it or to the conduct of its business or the ownership of its assets. Except as set forth in Part 3.12 of the Parent Disclosure Schedule, neither Parent nor any of its Subsidiaries has received any written notice or to the Knowledge of Parent any other communication from any Person regarding any actual or possible violation of, or failure to comply with, any Legal Requirement.

3.13 Governmental Authorizations. Part 3.13 of the Parent Disclosure Schedule identifies each Governmental Authorization held by Parent and each of its Subsidiaries that is material to the operation of its business, and Parent has made available to the Company or its Representatives accurate and complete copies of all Governmental Authorizations identified in Part 3.13 of the Parent Disclosure Schedule. The Governmental Authorizations identified in Part 3.13 of the Parent Disclosure Schedule are valid and in full force and effect, and collectively constitute all Governmental Authorizations necessary to enable Parent and each of its Subsidiaries to conduct its business in the manner in which its business is currently being conducted in all material respects.

3.14 Disclaimer of Other Representations and Warranties; Knowledge

(a) NEITHER PARENT, ITS SUBSIDIARIES, ANY AFFILIATE THEREOF, NOR ANY OF THEIR RESPECTIVE REPRESENTATIVE, HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO PARENT, ITS SUBSIDIARIES OR THEIR RESPECTIVE BUSINESS OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS ARTICLE 3.

(b) Without limiting the generality of the foregoing, neither Parent, its Subsidiaries, nor any Representative has made, and shall not be deemed to have made, any representations or warranties in the materials relating to the business of Parent or its Subsidiaries made available to the Company or its Representatives, including due diligence materials, or in any presentation of the business of Parent by management of Parent or others in connection with the transactions contemplated hereby, and no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder or otherwise or deemed to be relied upon by the Company in executing, delivering and performing this Agreement and the transactions contemplated hereby. It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, including but not limited to, any offering memorandum or similar materials made available by Parent and its Representatives are not and shall not be deemed to be or to include representations or warranties of Parent, and are not and shall not be deemed to be relied upon by the Company in executing, delivering and performing this Agreement and the transactions contemplated hereby.

4. CERTAIN COVENANTS

4.1 Certain Employee Matters.

(a) Termination of 401(k) Plan. The Company shall terminate, effective one (1) day prior to the Closing, any Plan that contains a cash or deferred arrangement intended to qualify under Section 401(k) of the Code (the "401(k) Plans"). On or before the Closing Date, the Company shall provide Parent with evidence that the Company Board has adopted resolutions to terminate the 401(k) Plans.

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(b) Benefits. Following the Effective Time, the Continuing Employees will be entitled to participate in either (i) the Company Employee Plans (other than equity-based plans) on the same terms, or terms which in the aggregate provide substantially comparable benefits, as those in effect immediately prior to the Effective Time, (ii) the employee benefit plans of Parent and its Subsidiaries on substantially the same terms as similarly situated employees of Parent and its Subsidiaries or (iii) a combination of (i) and (ii), in each case in the reasonable discretion of Parent, and Parent in its reasonable discretion may terminate any of the Company Employee Plans or merge any of the Company Employee Plans with Parent's employee benefit plans; provided, however, that Parent shall permit Continuing Employees to participate, as of the Effective Time, in a 401(k) plan sponsored by Parent or an Affiliate of Parent. Unless such recognition of service would result in a duplication of benefits, Parent shall, and shall cause the Surviving Corporation to, treat, and cause the applicable benefit plans to treat, the service of the Continuing Employees with the Company attributable to any period before the Effective Time as service rendered to Parent or the Surviving Corporation for all purposes, including, but not limited to, eligibility to participate, vesting, benefit levels the applicability of any minimum waiting periods for participation and benefit accruals, excluding for these purposes benefit accrual under any defined benefit plan. Without limiting the foregoing, Parent shall not, and shall cause the Surviving Corporation not to, treat any of the Continuing Employees as a "new" employee for purposes of any exclusions under any health or similar welfare plan of Parent or the Surviving Corporation for a preexisting medical condition, except to the extent such exclusions were applicable under a the Company Employee Plan immediately prior to the Effective Time. In addition, Parent shall recognize, and shall cause the Surviving Corporation and each applicable benefit plan to recognize, for each Continuing Employee and his or her spouse, domestic partner and dependents for purposes of applying annual deductible, co-payment and out-of-pocket maximums under such benefit plan any deductible, co-payment and out-of-pocket expenses paid by the Continuing Employee and his or her spouse, domestic partner and dependents under an analogous Company Employee Plan during the plan year of such plan in which occurs the later of the Effective Time and the date on which the Continuing Employee begins participation in such benefit plan.

(c) Parent Restricted Stock Units

(i) Immediately following the Closing Date, Parent will grant an award of Parent Restricted Stock Units to each individual identified on Exhibit M in such number of Parent Restricted Stock Units set forth opposite such individual's name.

(ii) Awards of Parent Restricted Stock Units will be subject to all of the terms and conditions of the Parent Incentive Plan and the form of Parent Restricted Stock Unit Grant Agreement attached hereto as Exhibit N Parent will provide each award recipient with notice of his or her award under this Section 4.1(c) as soon as practicable after the Closing Date. Each award of Parent Restricted Stock Units granted hereunder will be administered in accordance with the terms and conditions of the Parent Incentive Plan and the Parent Restricted Stock Unit Grant Agreement evidencing such award.

4.2 Directors' and Officers' Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to indemnification, exculpation or advancement of expenses now existing in favor of, and all limitations on the personal Liability of each present and former director, and officer of the Company provided for in the Company's Charter Documents in effect as of the date hereof (the "Fiduciary Indemnitees"), shall continue to be honored and in full force and effect, with respect to claims arising from acts, omissions, facts or events that occurred on or before the Effective Time, for a period of six (6) years after the Effective Time; provided, however, that all rights to indemnification in respect of any claims asserted or made within such period shall continue until the disposition of such claim. The Organizational Documents of the Surviving Corporation will contain provisions with respect to indemnification, exculpation from Liability and advancement of expenses, with respect to claims arising from acts, omissions, facts or events that occurred on or before the Effective Time, that are at least as favorable as those currently provided in the Company's certificate of incorporation and during such six (6) year period following the Effective Time, the Surviving Corporation shall not, and Parent shall cause the Surviving Corporation not to, amend, repeal or otherwise modify such provisions in any manner that would materially and adversely affect the rights thereunder of individuals who at or prior to the Effective Time were Fiduciary Indemnitees of the Company, with respect to claims arising from acts, omissions, facts or events that occurred on or before the Effective Time (including, without limitation, the transactions contemplated by this Agreement), unless such modification is required by applicable Legal Requirements. From and after the Effective Time, Parent and the Surviving Corporation also agree, jointly and severally, to indemnify and hold harmless the Fiduciary Indemnitees of the Company with respect to claims arising from acts, omissions, facts of events that occurred on or before the Effective Time, to the extent (i) provided in any written indemnification agreements in effect between the Company and such individuals set forth on Part 4.2(a) of the Disclosure Schedule or (ii) required by the Company's Charter Documents, in each case as in effect immediately prior to the Effective Time.

(b) For a period of six (6) years after the Effective Time, Parent shall maintain in effect, with respect to claims arising from acts, omissions, facts or events that occurred on or before the Effective Time, the current level and scope of directors' and officers' liability insurance as in effect at the Company immediately prior to the Effective Time covering those persons who are covered by the Company's directors' and officers' liability insurance policy immediately prior to the Effective Time; provided, however, that if the aggregate annual premiums for such insurance at any time during such period exceed 200% of the current annum rate of premium currently paid by the Company for such insurance on the date hereof, then Parent will provide the maximum coverage that

will then be available at an annual premium equal to 200% of such rate. Notwithstanding the foregoing, Parent may satisfy its obligations under this Section 4.2(b) by procuring an equivalent six (6) year "tail" policy under the Company's existing directors' and officers' liability insurance policy, the equivalent annual premium for which "tail" policy shall not exceed 200% of the per annum rate of premium currently paid by the Company for directors' and officers' liability insurance; provided that if the equivalent annual premium for such "tail" policy exceeds 200% of the per annum rate of premium currently paid by the Company for directors' and officers' liability insurance, then Parent will provide the maximum coverage that will then be available at an equivalent annual premium equal to 200% of such rate and in doing so will be deemed to have satisfied its obligations pursuant to this Section 4.2(b).

(c) The parties agree that Parent and the Surviving Corporation shall have the right to assume control of the defense of any claim or action against a Fiduciary Indemnatee covered by Section 4.2 (a "Fiduciary Claim"), with counsel of Parent's choosing. The applicable Fiduciary Indemnatee shall cooperate with Parent and the Surviving Company in such defense and make available to them all witnesses, pertinent records, materials and information in such Fiduciary Indemnatee's possession or under its control relating thereto. The applicable Fiduciary Indemnatee shall have the right to participate in (but not control) the defense of a Fiduciary Claim assumed by Parent, at the Fiduciary Indemnatee's expense, by retaining independent legal counsel reasonably satisfactory to Parent. Notwithstanding the foregoing, if Parent determines that a conflict of interest or potential conflict of interest exists between the Fiduciary Indemnatee and Parent, the Fiduciary Indemnatee may retain one (1) independent legal counsel reasonably satisfactory to Parent, and Parent or the Surviving Corporation shall pay such reasonable fees and expenses of such counsel as are acceptable to Parent; provided that the Fiduciary Indemnatee shall not settle, compromise or consent to the entry of any judgment with respect to a Fiduciary Claim without Parent's prior written consent, which consent will be in Parent's sole discretion.

(d) The provisions of this Section 4.2 are intended to be for the benefit of, and shall be enforceable by and against, each of the Fiduciary Indemnitees, and his or her heirs and Representatives. The provisions in this Section 4.2 are intended to be in addition to the rights otherwise available to the current directors, officers and employees of the Company by Legal Requirements, charters, bylaws or agreements.

(e) If Parent or the Surviving Corporation or any of the successors or assigns of Parent or the Surviving Corporation (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or Entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 4.2.

4.3 RESERVED.

4.4 Further Action. Subject to the terms and conditions herein provided, if at any time after the Effective Time, any further action is reasonably necessary to carry out the purposes of this Agreement or to vest the Surviving Corporation or Parent with full right, title and possession of and to all rights and property of Merger Sub or the Company, the proper officers and directors of each party to this Agreement and their respective subsidiaries shall use its or their commercially reasonable efforts to take, or cause to be taken, all such necessary action as may be reasonably requested by, and at the sole expense of, Parent.

4.5 Public Announcements. Parent and the Company shall consult with each other before issuing, and provide each other the opportunity to review, comment upon and concur with, any press release or otherwise making any public statements with respect to this Agreement, the Merger and the other transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by Legal Requirement or any listing agreement with a national securities exchange or trading system to which Parent is a party.

4.6 Parent SEC Documents

(a) . From the date of this Agreement until the one-year anniversary of the Effective Time, each of the Company and the Eligible Stockholders shall promptly furnish to Parent in writing all information concerning the Company and such Eligible Stockholder reasonably required by applicable securities laws, in each case that may be reasonably requested by Parent for inclusion in any Parent SEC Documents, and shall instruct the Company's accountants to cooperate with Parent in the provision of such information. For the avoidance of doubt, such cooperation of the Company and its Accountants and the Eligible Stockholders shall include assisting with (1) Parent's review and confirmation of the Unaudited Interim Financial Statements and the related consolidated statements of income and expenses, stockholders' or members' equity, as applicable, and cash flows of the Company for the year-to-date period ended on September 30, 2013, and, (2) after the Closing, the preparation of pro forma audited financial statements as though the Company's fiscal year end were changed to June 30 and such quarterly financial statements as may be required; provided, however, that Parent will be responsible for all costs of such audit. Each of the Company and the Eligible Stockholders agrees to promptly correct any information previously provided by it for use in any Parent SEC Document, if and to the extent that it shall have become false or misleading in any material respect. With respect to any Parent SEC Document that references an Eligible Stockholder by name, such Eligible Stockholder and his, her or its counsel, shall be given a reasonable opportunity to review such Parent SEC Document before it is filed with the SEC, and Parent shall give due consideration to the reasonable additions, deletions or changes suggested thereto by such party. In addition, with respect to any Parent SEC Document that references an Eligible Stockholder by name, Parent shall provide such Eligible Stockholder and his, her or its counsel, with copies of any written comments, and shall promptly inform them of any oral comments, that Parent or its counsel may receive from time to time from the SEC or its staff with respect to any Parent SEC Document promptly after receipt of such comments, and any written or oral responses thereto. Each Eligible Stockholder represents and warrants that none of the information supplied by or on behalf of such Eligible Stockholder for inclusion in a Parent SEC Document will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements true in all material respects of the circumstances under which they were made, not misleading.

4.7 Registration of Parent Common Stock. In order to promptly effect the registration of the shares of Parent Common Stock issuable to the holders of Company Capital Stock hereunder, Parent and certain of the stockholders of the Company and of Parent shall execute and deliver, concurrently with the Closing, the Registration Rights Agreement.

4.8 Nomination Agreement. Parent and certain of the stockholders of the Company and of Parent shall execute and deliver, concurrently with the Closing, the Nomination Agreement.

4.9 Reports Under the Exchange Act With a view to making available the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a former stockholder of the Company to sell securities of the Parent to the public without registration, Parent agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after Closing;

(b) file with the SEC in a timely manner all reports and other documents required of Parent under the Securities Act and the Exchange Act;

(c) furnish upon request to any former stockholder of the Company, so long as the former stockholder of the Company owns any Parent Capital Stock, (i) a copy of the most recent annual or quarterly report of Parent and such other reports and documents so filed by Parent and (ii) such other information as may be reasonably requested to avail any former stockholder of the Company of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such form.

5. INDEMNIFICATION

5.1 Survival of Representations, Etc.

(a) General Survival. Subject to Section 5.1(c), the representations and warranties made by the Company in this Agreement shall survive the Effective Time and shall expire on the twelve (12) month anniversary of the Effective Time (the "Expiration Date"; provided, however, that (i) the representations and warranties dealing with Tax matters and the representations and warranties made pursuant to Sections 2.1, 2.3, 2.7, 2.10(a)(i), 2.10(a)(ii), , 2.14, 2.15, and 2.20, and the first two sentences of Section 2.10(e) (collectively, the "Company Fundamental Reps") shall survive until 30 days after the expiration of the applicable statute of limitations governing such claims and (ii) if, at any time prior to the Expiration Date, any Parent Indemnitee properly delivers to the Stockholders' Agent a Claim Notice, then the claim asserted in such notice shall survive the Expiration Date until such time as such claim is fully and finally resolved.

(b) Parent Representations. Subject to Section 5.1(c), the representations and warranties made by Parent and Merger Sub in this Agreement shall survive the Effective Time and shall expire on the Expiration Date; provided, however, that (i) the representations and warranties made pursuant to Sections 3.1, 3.3, 3.6, and 3.8 shall survive until 30 days after the expiration of the applicable statute of limitations governing such claims and (ii) if, at any time prior to the Expiration Date, any Stockholder Indemnitee properly delivers to Parent a Claim Notice, then the claim asserted in such Claim Notice shall survive the Expiration Date until such time as such claim is fully and finally resolved.

(c) Intentional Misrepresentation; Fraud. Notwithstanding anything to the contrary contained in Section 5.1(a) or Section 5.1(b), the limitations set forth in Sections 5.1(a) and 5.1(b) shall not apply in the case of claims based upon intentional misrepresentation or fraud.

(d) Representations Not Limited. The representations, warranties, covenants and obligations of the parties set forth in this Agreement and the rights and remedies that may be exercised by the Indemnitees, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or knowledge of, any of the Indemnitees or any of their Representatives.

(e) Survival of Covenants. The respective covenants and obligations of the parties hereto set forth in this Agreement shall survive until satisfied in accordance with their respective terms.

(f) General. The parties acknowledge that the time periods set forth in this Section 5.1 and elsewhere in this Agreement for the assertion of claims and notices under this Agreement are the result of arms'-length negotiation among the parties and that they intend for the time periods to be enforced as agreed by the parties. The parties further acknowledge that the time periods set forth in this Section 5.1 and elsewhere in the Agreement may be shorter than otherwise provided by law.

5.2 Indemnification.

(a) Stockholder Indemnification Obligations. From and after the Effective Time (but subject to the limitations on indemnification set forth in this Article 5), each Eligible Stockholder (collectively, the "Stockholder Indemnitors"), jointly and severally to the extent of the Escrow Amount, and severally and not jointly with regard to any amounts in excess of the Escrow Amount, shall hold harmless and indemnify each of the Parent Indemnitees from and against, and shall compensate and reimburse each of the Parent Indemnitees for, any Damages which are directly suffered or incurred by any of the Parent Indemnitees or to which any of the Parent Indemnitees may otherwise directly become subject (regardless of whether or not such Damages relate to any third-party

claim) and which arise directly from or as a result of, or are directly connected with:

(i) any inaccuracy in or breach of any representation or warranty made by the Company in this Agreement;

(ii) any breach of any covenant or obligation, including without limitation pursuant to Section 10.2 of the Company in this Agreement;

(iii) the proper exercise by any stockholder of the Company of such stockholder's appraisal rights under the DGCL for any amount in excess of what is payable by Parent in accordance with this Agreement with respect to such stockholders' shares of Company Capital Stock; and

(iv) any Taxes attributable to a Pre-Closing Tax Period. For any taxable period that includes, but does not end on the Closing Date, Taxes attributable to a Pre-Closing Tax Period shall include Taxes attributable to the period on or prior to the Closing Date, calculated as if the Closing Date were the last day of the taxable period (and for such purpose, the taxable period of any partnership or other pass-through entity in which the Company holds a beneficial interest shall be deemed to terminate at such time); provided, that any Taxes not based on income or receipts shall be prorated to the periods on or prior to the Closing Date and after the Closing Date based on the number of days in each such period. Notwithstanding anything to the contrary in this Agreement, the employer's share of any and all payroll taxes imposed in connection with the Management Cash Transaction Bonus Payments and Closing Bonus Payments made under Section 1.9 hereof shall be treated as attributable to the taxable period beginning after the Closing Date.

(b) Parent Indemnification Obligations. From and after the Effective Time (but subject to the limitations on indemnification set forth in this Article 5), Parent shall hold harmless and indemnify each of the Stockholder Indemnitees from and against, and shall compensate and reimburse each of the Stockholder Indemnitees for, any Damages which are directly suffered or incurred by any of the Stockholder Indemnitees or to which any of the Stockholder Indemnitees may otherwise directly become subject (regardless of whether or not such Damages relate to any third-party claim) and which arise directly from or as a result of, or are directly connected with:

(i) any inaccuracy in or breach of any representation or warranty made by Parent or Merger Sub in this Agreement; or

(ii) any breach of any covenant or obligation of Parent or Merger Sub in this Agreement.

(c) Damage to Parent. The parties acknowledge and agree that, if the Surviving Corporation suffers, incurs or otherwise becomes subject to any Damages as a result of or in connection with any inaccuracy in or breach of any representation, warranty, covenant or obligation of the Company, then (without limiting any of the rights of the Surviving Corporation as a Parent Indemnitee) Parent shall also be deemed, by virtue of its ownership of equity interest in the Surviving Corporation, to have incurred Damages as a result of and in connection with such inaccuracy or breach (it being, understood, however, that the Parent Indemnitees shall not be entitled to recover more than once for the same Damages).

(d) Calculation of Damages: Insurance Proceeds and Tax Benefits. For the purposes of calculating Damages indemnifiable under this Section 5.2, Damages (i) shall be determined without duplication of recovery by reason of the state of facts giving rise to such Damages constituting a breach of more than one representation, warranty, covenant or agreements and (ii) shall be reduced by the amount of Tax Benefits attributable to such Damages. The Stockholder Indemnitors shall not be liable under this Article 5 for any Damages relating to any matter to the extent that there is included a specific Liability or reserve relating to such matter in the Unaudited Interim Financial Statements; provided, that the Stockholder Indemnitors shall be liable for any Damages in excess of the amount stated in the Unaudited Interim Financial Statements. Parent shall not be liable under this Article 5 for any Damages relating to any matter to the extent that there is a specific Liability or reserve relating to such matter included in the Parent Financial Statements. The Indemnitee shall use commercially reasonable efforts to collect any amounts subject to indemnification pursuant to this Article 5 under applicable insurance policies covering such Damages or from such other Person alleged to have responsibility therefor, if any, and the amount of any Damages payable under this Article 5 by an Indemnitor shall be reduced by any amounts actually recovered by the Indemnitee under such insurance policies or from such other Person alleged to be responsible. If an Indemnitee receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Damages, subsequent to an indemnification payment hereunder, then such Indemnitee shall promptly reimburse the Indemnitors for any payment made or expense incurred by such Indemnitor in connection with providing such indemnification payment in the amount received by the Indemnitee, net of any expenses reasonably incurred by such Indemnitee in collecting such amount. If the Indemnitee receives any payment from an Indemnitor in respect of any Damages and the Indemnitee could have recovered all or a part of such Losses from a third party based on the underlying claim asserted against the Indemnitor, the Indemnitee shall assign such of its rights to proceed against such third party as are necessary to permit the Stockholders' Agent, if the Indemnitee is a Parent Indemnitee, or Parent, if the Indemnitee is a Stockholder Indemnitee, to recover from such third party the amount of such indemnification payment.

(e) Duty to Mitigate. Each Indemnitee shall take all action required by applicable law to minimize the amount of such

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commercially reasonable efforts, to mitigate any and all Damages for which it seeks indemnification hereunder upon becoming aware of any event that could reasonably be expected to give rise to any Damages; provided, that this shall in no event limit recovery for Damages actually paid out in connection with any Third Party Claim .

5.3 Limitations.

(a) Deductible. Subject to Section 5.3(b), (i) the Stockholder Indemnitors shall not be required to make any indemnification payment pursuant to Section 5.2(a)(i) (solely to the extent directly related to any of the matters referred to in Section 5.2(a)(i)) for any inaccuracy in or breach of any representation or warranty in this Agreement until such time as the total amount of all Damages (including the Damages arising from such inaccuracy or breach and all other Damages arising from any other inaccuracies or breaches of any representations or warranties) that have been directly or indirectly suffered or incurred by any one or more of the Parent Indemnitees, or to which any one or more of the Parent Indemnitees has or have otherwise directly or indirectly become subject, exceeds \$300,000 in the aggregate, and (ii) Parent shall not be required to make any indemnification payment pursuant to Section 5.2(b)(i) (solely to the extent directly related to any of the matters referred to in Section 5.2(b)(i)), for any inaccuracy in or breach of any representation or warranty in this Agreement until such time as the total amount of all Damages (including the Damages arising from such inaccuracy or breach and all other Damages arising from any other inaccuracies or breaches of any representations or warranties) that have been directly suffered or incurred by any one or more of the Stockholder Indemnitees, or to which any one or more of the Stockholder Indemnitees has or have otherwise directly become subject, exceeds \$300,000 in the aggregate. If the total amount of the Damages referenced in clause (i) or (ii) above exceeds \$300,000 in the aggregate, then the Stockholder Indemnitees or Parent Indemnitees, as applicable, shall be entitled to be indemnified against and compensated and reimbursed only for all Damages from the first dollar in excess of such \$300,000.

(b) Applicability of Deductible. The limitations set forth in Section 5.3(a) shall not apply: (i) in the case of intentional misrepresentation or fraud; or (ii) to the matters referred to in Section 5.2(a)(ii), Section 5.2(a)(iii) or Section 5.2(b)(iii).

(c) Parent Cap. Except in the case of intentional misrepresentation or fraud, the total amount of indemnification payments that Parent can be required to make to the Stockholder Indemnitees pursuant to this Article 5 shall be limited to 15% of the Merger Consideration (the "Parent Cap"). In the case of intentional misrepresentation or fraud, Parent shall be liable for such Damages. All payments made to satisfy any indemnification obligations to the Stockholder Indemnitees pursuant to this Article 5 shall be paid at the option of the Parent, in cash or in Parent Common Stock.

(d) Stockholder Cap and Other Limitations. Except in the case of intentional misrepresentation or fraud, and with regard to the Company Fundamental Reps, the total amount of indemnification payments that the Stockholder Indemnitors can be required to make to the Parent Indemnitees pursuant to this Article 5 shall be limited to the Escrow Amount. In the case of claims for indemnification relating to the Company Fundamental Reps, the total amount of indemnification payments that a Stockholder Indemnitor can be required to make to the Parent Indemnitees pursuant to this Article 5 shall be limited to Merger Consideration Actually Received by such Stockholder Indemnitor (which shall include its Pro Rata Portion of any remaining Escrow Amounts at the time of such claim). In the case of intentional misrepresentation or fraud, the Parent Indemnitees who directly perpetrate such misrepresentation or fraud shall be liable for such Damages. Liability of the Stockholder Indemnitors will be several and not joint except to the extent of the Escrow Amount; provided however, that no Stockholder Indemnitors shall be liable for the intentional misrepresentation or fraud of another party. For the purposes of this Section 5.3(d), "Merger Consideration Actually Received" means the cash amounts received and the shares of Parent Common Stock held by a Stockholder Indemnitor, provided, that if such Stockholder Indemnitor has sold any shares of Parent Common Stock in the open market in an arms-length transaction at the time of such indemnification payment, the "Merger Consideration Actually Received" will also include any consideration actually received upon the sale of such shares of Parent Common Stock.

5.4 No Contribution. Each Stockholder Indemnitor waives, and acknowledges and agrees that he shall not have and shall not exercise or assert (or attempt to exercise or assert), any right of contribution, right of indemnity or other right or remedy against Merger Sub or the Company in connection with any indemnification obligation or any other Liability to which he may become subject under or in connection with this Agreement or any other agreement or document delivered to Parent in connection with this Agreement.

5.5 Claims Procedures. Any claim for indemnification, compensation or reimbursement pursuant to Section 5 shall be brought and resolved exclusively as follows:

(a) If any Indemnitee has or claims in good faith to have incurred or suffered Damages for which it is or may be entitled to indemnification, compensation or reimbursement under Article 5 (a "Claim") on or prior to 5:00 p.m. (Eastern Standard Time) on the Expiration Date, subject to the limitations set forth in Article 5, such Indemnitee may deliver a claim notice (a "Claim Notice") to the Stockholders' Agent, in the case of a Parent Indemnitee, or to the Parent, in the case of a Stockholder Indemnitee (such recipient being, the "Claim Notice Recipient"), promptly (and in no event later than 15 days) after such Indemnitee becomes aware of any fact, condition or event which may give rise to Damages for which indemnification may be sought under Section 5.2. The failure of any Indemnitee to timely give notice hereunder shall not affect the rights to indemnification hereunder except and only to the extent of actual, material damage to the Stockholder Indemnitors or Parent Indemnitor, as applicable. Each Claim Notice shall: (i) state that the Indemnitee believes in good faith that the Indemnitee is entitled to indemnification, compensation or reimbursement under Article 5; (ii) contain a brief description of the facts and circumstances supporting the Indemnitee's claim; and (iii) if practicable, contain a non-binding, preliminary, good faith estimate of the amount to which the Indemnitee claims to be entitled

(the aggregate amount of such estimate, as it may be modified by the Indemnatee in good faith from time to time, being referred to as the "Claimed Amount"). Following the delivery of a Claim Notice by a Parent Indemnatee, the Stockholders' Agent and its representatives and agents shall be given reasonable access to the books and records of the Surviving Corporation and to such personnel or representatives of the Surviving Corporation and Parent, including but not limited to the individuals responsible for the matters that are subject of the Claim Notice, as they may reasonably require for the purposes of investigating or resolving any disputes or responding to any matters or inquiries raised in the Claim Notice.

(b) During the thirty (30)-day period commencing upon receipt by the Claim Notice Recipient of a Claim Notice from an Indemnitee (the "Dispute Period"), the Claim Notice Recipient may deliver to the Indemnitee who delivered the Claim Notice a written response (the "Response Notice") in which the Claim Notice Recipient: (i) agrees that the full Claimed Amount is due and payable to the Indemnitee; (ii) agrees that part, but not all, of the Claimed Amount (such amount in clause (i) or (ii), an "Agreed Amount") is due and payable to the Indemnitee; (iii) indicates that no part of the Claimed Amount is due and payable to the Indemnitee or (iv) requests such additional information as the Claim Notice Recipient may reasonably require in order to determine whether all or part of such Claimed Amount is due and payable to the Indemnitee. Any part of the Claimed Amount that is not agreed to be due and payable to the Indemnitee pursuant to the Response Notice (or the entire Claimed Amount, if the Claim Notice Recipient asserts in the Response Notice that no part of the Claimed Amount is owed to the Indemnitee) being referred to as the "Contested Amount". If a Response Notice is not received by the Indemnitee from the Claim Notice Recipient prior to the expiration of the Dispute Period, then the Claim Notice Recipient shall be conclusively deemed to have agreed that the full Claimed Amount referred to in the applicable Claim Notice is due and payable to the Indemnitee and such amount shall also be deemed to be an "Agreed Amount."

(c) If the Claim Notice Recipient delivers a Response Notice in accordance with Section 5.5(b)(iv), the Indemnitee will respond (a "Further Information Notice") to such Response Notice within thirty (30) days after receipt of such Response Notice, and the Claim Notice Recipient shall provide a Response Notice in accordance with Section 5.5(b)(i), (ii) or (iii) within fifteen (15) Business Days after receipt of such Further Information Notice.

(d) If the Claim Notice Recipient in its Response Notice agrees that an Agreed Amount is owed to the Indemnitee, or if no Response Notice is received by the Indemnitee from the Claim Recipient prior to the expiration of the Dispute Period, then (i) within three Business Days following the earlier of the delivery of such Response Notice or the expiration of the Dispute Period, (A) if the Parent is the Indemnitee, then, subject to the limitations set forth in Section 5.3, the Stockholders' Agent shall instruct the Escrow Agent to remove from the Escrow Account and return to Parent such number of shares of Parent Common Stock as are equal to (x) such Agreed Amount divided by (y) the Average Per Share Price as of such date; provided that, to the extent such Agreed Amount exceeds the balance of the Escrow Amount, and the Damages relate to a breach of the Company Fundamental Reps or to misrepresentation or fraud, each Eligible Stockholder shall pay its several portion of such excess of such Agreed Amount above the balance of the Escrow Account, or (B) if the Stockholders Indemnitee is the Indemnitee, then, subject to the limitations set forth in Section 5.3, Parent shall pay the Agreed Amount to the Stockholder Indemnitees in cash; and each Eligible Stockholder shall be entitled to receive its Pro Rata Portion of such Agreed Amount with respect to each share of Company Capital Stock owned by such Eligible Stockholder as of the Effective Time. Following a distribution from the Escrow Amount pursuant to subsection (A) above, the Escrow Amount shall be reduced by such Agreed Amount as of the date of such distribution.

(e) If any Response Notice expressly indicates that there is a Contested Amount, the Claim Notice Recipient and the Indemnitee shall attempt in good faith for a period not to exceed ten (10) Business Days, unless otherwise mutually agreed, to resolve the dispute related to the Contested Amount. If the Claim Notice Recipient and the Indemnitee resolve such dispute, such resolution shall be binding on all of the Eligible Stockholders, Parent, Merger Sub, the Surviving Corporation and such Indemnitee, and a settlement agreement stipulating the amount owed to such Indemnitee shall be signed by such Indemnitee and the Claim Notice Recipient and the amount so stipulated in such settlement agreement shall be treated as an Agreed Amount. If no such agreement can be reached during such ten (10) Business Day period, then Parent or the Stockholders' Representative may institute proceedings in court in accordance with Section 11.8 to resolve any such dispute. Each of Parent and Stockholders' Representative shall in all instances seek to resolve such disputes in as expeditious a manner as practicable.

5.6 Defense of Third-Party Claims. Any written assertion or commencement by any Person of any claim or Legal Proceeding (whether against Merger Sub, the Company, Parent, any Eligible Stockholder or any other Person) with respect to which any Indemnitor may become obligated to hold harmless, indemnify, compensate or reimburse any Indemnitee pursuant to this Article 5, ("Third Party Claims") shall be governed by and contingent upon the following additional terms and conditions:

(a) If an Indemnitee shall receive notice of any Third Party Claim, the Indemnitee shall give the Stockholders' Agent (if the Indemnitee is a Parent Indemnitee) or Parent (if the Indemnitee is a Stockholder Indemnitee) notice of such Third Party Claim promptly, and in any event no later than twenty (20) Business Days following the receipt by the Indemnitee of such notice; provided, however, that the failure to provide such notice shall not release an Indemnitor from any of its obligations under this Article 5, except to the extent such failure materially prejudices the defense of such Legal Proceeding. The notice of claim shall describe in reasonable detail the facts known to the Indemnitee giving rise to such indemnification claim, and to the extent determinable the amount or good faith estimate of the amount arising therefrom.

(b) Within thirty (30) days after delivery of a notice of a Third Party Claim pursuant to Section 5.6(a) for which Parent would be an Indemnitor, Parent may, upon written notice thereof to the Stockholders' Agent, assume control of the defense of such Third Party Claim. The Stockholders' Agent and the Stockholder Indemnitees shall cooperate with Parent in such defense and make available to Parent all witnesses, pertinent records, materials and information in the Stockholder Indemnitees' possession or under the Stockholder Indemnitees' control relating thereto as is reasonably requested by Parent. The Stockholders' Agent shall have the right to participate in (but not control) the defense of a Third Party Claim assumed by Parent, at the Stockholder Indemnitees'

expense, by retaining independent legal counsel reasonably satisfactory to Parent. Notwithstanding the foregoing, if Parent determines that a conflict of interest or potential conflict of interest exists between the Stockholder Indemnitees and Parent, the Stockholders' Agent may retain one (1) independent legal counsel reasonably satisfactory to Parent, and Parent shall pay such reasonable fees and expenses of such counsel as are acceptable to Parent; provided that none of the Stockholders' Agent, the Eligible Stockholders shall settle, compromise or discharge a Third Party Claim without Parent's prior written consent, which consent will be in Parent's sole discretion.

(c) If a Parent Indemnitee is entitled to indemnification from the Stockholder Indemnitors in connection with a Third Party Claim, it shall obtain reimbursement from the Escrow Amount, by directing the Escrow Agent to remove from the Escrow Account and return to Parent on the next Distribution Date such number of shares of Parent Common Stock as are equal to (x) the total amount of its Damages, including the amount of such reimbursable legal fees and expenses actually incurred, divided by (y) the Average Per Share Price as of such date. Following such a distribution from the Escrow Amount, the Escrow Amount shall be reduced by the amount of such Damages as of the date of such distribution.

5.7 Remedies Exclusive; Sole Recourse. From and after the Effective Time, the rights of the Indemnitees to indemnification relating to this Agreement or the transactions contemplated hereby shall be strictly limited to those contained in this Article 5 and Article 5.7, and such indemnification rights shall be the sole and exclusive remedies of the Indemnitees subsequent to the Effective Time with respect to any matter in any way relating to this Agreement or the Merger or arising in connection herewith or therewith. The return to Parent of shares of Parent Common Stock from the Escrow Amount shall be the Parent Indemnitees' sole recourse for all Damages, except with regard to the Company Fundamental Reps and misrepresentation or fraud, subject to the limitations set forth in this Article 5 and the provisions of Article 5.7. Except as provided in this Article 5, no claim, action or remedy shall be brought or maintained by any party against any other party, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misstatement or omission respecting an inaccuracy in or breach of any of the representations, warranties or covenants of any of the parties hereto set forth or contained in this Agreement.

5.8 Conflict of Interest and Privilege. The parties acknowledge that the Company has retained Perkins Coie LLP ("PC") to act as its counsel in connection with the transactions contemplated hereby, that PC has not acted as counsel for any other party in connection with the transactions contemplated hereby (including any holders of the Company's outstanding Capital Stock or Stockholders' Agent), and that none of the other parties, including the Company, has the status of a client of PC for conflict of interest or any other purposes as a result thereof. Parent and Company hereby agree that, in the event that a dispute arises after the Closing between Parent (including and/or the Surviving Corporation) and any holders of the Company's outstanding Capital Stock or Stockholders' Agent, PC may represent any holders of the Company's outstanding Capital Stock and/or Stockholders' Agent in such dispute even though the interests of any holders of the Company's outstanding Capital Stock or Stockholders' Agent may be directly adverse to the Parent, the other holders of the Company's outstanding Capital Stock, Stockholders' Agent, or the Company, and even though PC may have represented the Surviving Corporation (including the Company as its predecessor in interest) in a matter substantially related to such dispute or may be handling ongoing matters for the Parent or the Surviving Corporation (including the Company as its predecessor in interest). Parent further agrees that, as to all communications among PC and the Company, any holders of the Company's outstanding Capital Stock and/or Stockholders' Agent that relate in any way to the transactions contemplated by this Agreement, the attorney-client privilege and the exception of client confidence belongs solely to the Stockholders' Agent and may be controlled only by the Stockholders' Agent and shall not pass to or be claimed by Parent or the Surviving Corporation (including the Company as its predecessor in interest), because the interests of the Parent and its Affiliates were directly adverse to the Company, the holders of the Company's outstanding Capital Stock and/or Stockholders' Agent at the time such communications were made. This right to the attorney-client privilege shall exist even if such communications may exist on Surviving Corporation's computer system or in documents in the Surviving Corporation's possession. Notwithstanding the foregoing, in the event that a dispute arises between Purchaser, the Surviving Corporation, and a Person other than a party to this Agreement after the Closing, the Surviving Corporation may assert the attorney-client privilege to prevent disclosure to such third-party of confidential communications by PC to the Surviving Corporation; provided, however, that the Surviving Corporation may not waive such privilege without the prior written consent of Stockholders' Agent.

6. ESCROW

6.1 Establishment of Escrow. At the Effective Time, Parent shall deliver the Escrow Amount to American Stock Transfer & Trust Company, LLC, a New York limited liability trust company, or such other escrow agent as may be mutually agreed by the Parties (the "Escrow Agent") as security for any indemnification payments required to be made to Parent or Merger Sub pursuant to Article 5 hereof. The Escrow Agent shall deposit the Escrow Amount into an account owned by Parent (the "Escrow Account") and shall hold the Escrow Amount pursuant to the terms of an escrow agreement to be agreed by the Parties in good faith and acting reasonably. The shares of Parent Common Stock constituting the Escrow Amount shall accrue dividends as if such shares were issued as Merger Consideration as of the Effective Time, provided that no dividends that would otherwise be required to be paid on such shares shall be paid unless and until such shares are released to the Eligible Stockholders in accordance with this Article 6. The Escrow Amount shall be reduced from time to time as set forth in Section 5.5, Section 5.6 and this Article 6 and shall be delivered to the Eligible Stockholders at the times and in the manner set forth in Section 5.5, Section 5.6 and this Article 6. Upon Parent's request, the Escrow Agent shall return to Parent any portion of the Escrow Amount attributable to any Dissenting Shares.

6.2 Establishment of Escrow Expense Fund Parent shall deposit the Closing Date Escrow Expense Fund Amount and the Final Payment Date Expense Fund Amount with the Escrow Agent, at such times pursuant to Section 1.6(a) without any act of the Stockholder Indemnitors, such deposits of the Closing Date Escrow Expense Fund Amount and the Final Payment Date Expense Fund Amount shall constitute the Escrow Expense Fund, a separate escrow fund to be governed by the terms set forth herein. Any amounts in the Escrow Expense Fund shall be available solely to (i) compensate the Stockholders' Agent in accordance with the terms hereof, and (ii) pay any third-party expenses incurred in connection with the defense, investigation, or settlement of

any claim from an Parent Indemnitee or any Third Party Claim under which Parent Indemnitee is entitled to indemnification by Stockholder Indemnitors under to this Agreement, as well as any costs and expenses associated with the Escrow Expense Fund. The Stockholders' Agent shall have full discretion over the Escrow Expense Fund, and the Escrow Agent shall follow any lawful directive of the Stockholders' Agent regarding the use or disbursement of all or a portion of the Escrow Expense Fund (to the extent any amount is available thereunder) to third parties and in amounts authorized in writing by the Stockholders' Agent.

6.3 Release of Escrow Amount and Escrow Expense Fund

(a) Within three (3) Business Days after the Expiration Date (the "Initial Distribution Date") the Eligible Stockholders shall receive, in the aggregate, a number of shares of Parent Common Stock equal to (A) minus (B) minus (C), where (A) equals the then-remaining Escrow Amount; (B) equals all shares constituting an Agreed Amount that have not already been distributed to the Parent pursuant to Section 5.5; and (C) equals any outstanding Claimed Amount (excluding any shares constituting an Agreed Amount that already have been distributed to the Eligible Stockholders pursuant to Section 5.5) (such aggregate amount, the "Initial Distribution Date Amount"). On the Initial Distribution Date, the Escrow Agent shall release to each Eligible Stockholder its Pro Rata Portion of the Initial Distribution Date Amount (less the portion of such amount that constitutes the Aggregate Management Delayed Stock Consideration) with respect to each share of Company Capital Stock owned by such Eligible Stockholder as of the Effective Time. Following the Initial Distribution Date, the Escrow Amount shall be reduced by the Agreed Amount as of such date and the number of shares distributed to Eligible Stockholders with respect to such Initial Distribution Date. If there is no outstanding Claimed Amount on the Initial Distribution Date, the Initial Distribution Date Amount shall also include any remaining amount in the Escrow Expense Fund.

(b) After the Initial Distribution Date, within three (3) Business Days after the date on which any Claims with respect to any outstanding Claimed Amount as of the Initial Distribution Date are fully and finally resolved pursuant to a Final Resolution (a "Post-Initial Distribution Date") the Eligible Stockholders shall receive, in the aggregate, a number of shares of Parent Common Stock equal to (A) minus (B) minus (C), where (A) equals the then remaining Escrow Amount, (B) equals all shares constituting an Agreed Amount that have not already been distributed to the Parent pursuant to Section 5.5; and (C) equals any outstanding Claimed Shares (excluding any shares constituting an Agreed Amount that already have been distributed to the Eligible Stockholders pursuant to Section 5.5) (such aggregate amount, the "Post-Initial Distribution Date Amount"). On each Post-Initial Distribution Date, the Escrow Agent shall release to each Eligible Stockholder its Pro Rata Portion of each such Post-Initial Distribution Date Amount (less the portion of such amount that constitutes the Aggregate Management Delayed Stock Consideration) with respect to each share of Company Capital Stock held by such Eligible Stockholder as of the Effective Time. Following a Post-Initial Distribution Date, the Escrow Amount shall be reduced by the Agreed Amount as of such date and the number of shares distributed to Eligible Stockholders with respect to such Post-Initial Distribution Date. If there was any outstanding Claimed Amount on the Initial Distribution Date, the final Post-Initial Distribution Date Amount shall include any remaining amount in the Escrow Expense Fund.

(c) Any shares of Parent Common Stock required to be delivered to the Eligible Stockholders pursuant to Section 6.3(a) or 6.3(b) shall be delivered by the Escrow Agent directly to the Eligible Stockholders, provided that the Stockholders' Agent shall have delivered to Parent and Escrow Agent on the Expiration Date an updated Allocation Spreadsheet setting forth the Pro Rata Portion of such shares to be delivered to each Eligible Stockholder, the names of each Eligible Stockholder in which such shares are to be issued and cash paid and, to the extent any update has been received by the Stockholders' Agent, a mailing address where delivery of such shares and cash may be made to each such Eligible Stockholder.

(d) Notwithstanding anything to the contrary set forth in Article 5 or this Article 6, any Stockholder Indemnitor may elect, in his, her or its sole discretion, to satisfy any indemnification obligations owed to a Parent Indemnitee under Article 5 in cash rather than shares of Parent Common Stock.

6.4 Indemnification of Escrow Agent. The Parent on the one hand (solely through the Escrow Amount and not directly) and the Stockholders' Agent (solely on behalf of the Eligible Stockholders and in its capacity as the Stockholders' Agent, not in its individual capacity through the Escrow Amount and not directly) agree to indemnify the Escrow Agent for, and hold it harmless against, any loss, liability or expense incurred without gross negligence or willful misconduct on the part of Escrow Agent, arising out of or in connection with its carrying out of its duties hereunder. The Parent, on the one hand, and the Escrow Amount, on the other hand, shall each be liable for one-half of such amounts and such amounts shall not be deemed as Damages to either party pursuant to Article 5. In the event the Escrow Amount is insufficient to cover the one-half of such amounts for which it is responsible, such shortfall shall be paid by the Parent.

7. CONDITIONS PRECEDENT TO OBLIGATIONS OF PARENT AND MERGER SUB

The obligations of Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by Parent in writing) of the following conditions as of the Closing Date:

7.1 Representations and Warranties. Except as set forth in the Disclosure Schedule, each of the representations and warranties of the Company and the Seller Parties contained in this Agreement and each of the other Transaction Documents shall be true and correct as of the date hereof and as of the Closing Date (except with respect to representations and warranties that speak to an earlier date, in which case, they shall be so true and correct as of such earlier date), except (in the case where such representations and warranties are not qualified by materiality or a Company Material Adverse Effect) to the extent that the failure of such representations and warranties to be true and correct does not, individually or in the aggregate, constitute a Company Material Adverse Effect. The representations and warranties of Company and the Seller Parties contained in Articles 1, 2.3 and 2.20 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date, notwithstanding as though

made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

7.2 Covenants and Agreements. The Company and the Seller Parties shall have performed and complied in all material respects with all covenants and agreements required by this Agreement and each of the other Transaction Documents to be performed and complied with by them prior to or on the Closing Date.

7.3 Officer's Certificate. The Company shall have delivered to Parent a certificate, signed by an executive officer of the Company and dated as of the Closing Date, certifying as to the matters set forth in Sections 7.1 and 7.2 and the amount of Cash On Hand as of the Closing Date.

7.4 Legal Prohibition. No Legal Restraint shall be in effect and no order shall have been entered, in each case that restrains, enjoins or prohibits the performance of all or any part of this Agreement or the consummation of all or any part of the transactions contemplated hereby, or declares unlawful the transactions contemplated hereby or would cause any of the transactions contemplated hereby to be rescinded.

7.5 Necessary Consents. The Company shall have obtained all consents and shall have provided (in the reasonable judgment of Parent's counsel) all notices listed on Part 7.5 of the Disclosure Schedule.

7.6 Executed Employment Agreements. Each of L. Benjamin Elowitz and Robert Grady (the "Key Employees") shall have executed and delivered to Parent their respective Employment Agreements.

7.7 Executed Stockholders Agreement and Nomination Agreements.

Each of Parent, the Seller Parties and the Stockholders' Agent shall have executed and delivered the Stockholders Agreement; each of Parent and the Seller Parties shall have executed and delivered the Nomination Agreement.

7.8 Company Approvals. The Required Merger Stockholder Votes and the approval of the Board of Directors of the Company shall have been obtained and the Company shall have delivered within 24 hours following the execution and delivery of this Agreement evidence thereof in the form of irrevocable written consents of the holders of the Company Capital Stock representing the Required Merger Stockholder Vote adopting and approving the Merger and this Agreement.

7.9 Company Financial Statements. Parent shall have received all Company Financial Statements.

7.10 Good Standing. Parent shall have received confirmation that the Company and each of its Subsidiaries is in good standing in the state of its formation and any other required jurisdictions.

7.11 Encumbrances. All liens and Encumbrances on the Company, any of its Subsidiaries and any of their assets shall have been released.

8. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE COMPANY

The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by the Company in writing) of the following conditions as of the Closing Date:

8.1 Representations and Warranties. Except as set forth in the Parent Disclosure Schedule, each of the representations and warranties of Parent and Merger Sub contained in this Agreement and each of the other Transaction Documents shall be true and correct as of the date hereof and as of the Closing Date (except with respect to representations and warranties that speak to an earlier date, in which case, they shall be so true and correct as of such earlier date), except (in the case where such representations and warranties are not qualified by materiality or a Parent Material Adverse Effect) to the extent that the failure of such representations and warranties to be true and correct does not, individually or in the aggregate, constitute a Parent Material Adverse Effect. The representations and warranties of Parent and Merger Sub contained in Sections 3.1, 3.3 and 3.6 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

8.2 Covenants and Agreements. Parent and Merger Sub shall have performed and complied in all material respects with all covenants and agreements required by this Agreement and each of the other Transaction Documents to be performed and complied with by it prior to or on the Closing Date.

8.3 Officer's Certificate. Parent shall have delivered to the Company a certificate, signed by an executive officer of Parent and dated as of the Closing Date, certifying as to the matters set forth in Sections 8.1, and 8.2.

8.4 Legal Prohibition. No Legal Restraint shall be in effect and no order shall have been entered, in each case that restrains, enjoins or prohibits the performance of all or any part of this Agreement or the consummation of all or any part of the transactions contemplated hereby, or declares unlawful the transactions contemplated hereby or would cause any of the transactions contemplated hereby to be rescinded.

8.5 Necessary Consents. Parent shall have obtained all consents and shall have provided (in the reasonable judgment of the Company's counsel) all notices listed on Part 8.7 of the Parent Disclosure Schedule.

8.6 Executed Stockholders Agreement and Nomination Agreement Each of Parent and Robert F.X. Sillerman shall have executed and delivered the Stockholders Agreement; and Parent shall have executed and delivered the Nomination Agreement.

8.7 RESERVED

(a) .

9. RESERVED

10. TAX MATTERS

10.1 Consistent Tax Reporting. Except as required by law, the parties intend to treat the transaction as a reorganization within the meaning of Section 368(a) of the Code.

10.2 Tax Covenants.

It is the intention of the parties hereto to treat any indemnity payment made under this Agreement as an adjustment to the consideration payable pursuant to Article 1 for all Tax purposes, and the parties agree to file their Tax Returns accordingly, except as otherwise required by a change in applicable Tax Laws or a final determination.

10.3 Tax Audits and Contests; Cooperation.

(a) After the Closing, Parent shall control the conduct, through counsel of its own choosing, of any audit, claim for refund or administrative or judicial proceeding involving any asserted Tax Liability or refund with respect to the Company (any such audit, claim for refund or proceeding relating to an asserted Tax Liability referred to herein as a "Contest"). Parent shall promptly notify the Stockholders' Agent upon receipt by Parent or any Affiliate of Parent (including the Company after the Closing Date) of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes relating to a taxable period ending on or prior to the Closing Date for which the Company may be liable under this Agreement (any such inquiry, claim, assessment, audit or similar event, a "Tax Matter"). Neither Parent nor any of its Affiliates shall enter into any settlement of or otherwise compromise any Tax Matter that adversely affects or may adversely affect the Tax liability of the Eligible Stockholders (as of prior to the Closing) or any Affiliate of the foregoing without the consent of the Stockholders' Agent, which consent shall not be unreasonably withheld or delayed. The Parent shall keep the Stockholders' Agent fully and timely informed with respect to the commencement, status and nature of any Tax Matter. The Parent shall, in good faith, allow the Stockholders' Agent to make comments to Parent regarding the conduct of or positions taken in any such proceeding.

(b) The Stockholders' Agent shall furnish or cause to be furnished to Parent, upon request, as promptly as practicable, such information (including access to books and records) and assistance relating to the Company as is reasonably requested for the filing of any Tax Returns and the preparation, prosecution, defense or conduct of any Contest. The Company shall use commercially reasonable efforts to cooperate with Parent in the conduct of any Contest or other proceeding involving or otherwise relating to the Company (or their income or assets) with respect to any Tax and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 10.3(b). Any information obtained under this Section 10.3(b) shall be kept confidential, except as may be otherwise necessary in connection with the filing of Tax Returns or in the conduct of a Contest or other Tax Action.

10.4 Preparation of Tax Returns and Payment of Taxes

(a) Parent shall prepare (or cause to be prepared), and timely file (or cause to be filed) all Tax Returns of the Company required to be filed with any Governmental Body after the Closing Date. The Eligible Stockholders shall pay (or cause to be paid) to Parent for payment to the applicable Governmental Body on a timely basis all Taxes attributable to a Pre-Closing Tax Period (as determined under Section 5.2(a)(iv)). Parent shall pay (or cause to be paid) on a timely basis all other Taxes in respect of such Tax Returns. Parent shall have the right, to the extent permitted by law, to cause the Company to treat the Closing Date as the last day of a taxable period.

(b) In the case of Tax Returns that are filed with respect to a Pre-Closing Tax Period, Parent shall prepare such Tax Returns and shall deliver any such Tax Return to the Stockholders' Agent for its review at least 30 days prior to the date such Tax Return is required to be filed. If the Representative disputes any item on such Tax Return, it shall notify Parent of such disputed item (or items) and the basis for its objection, and the Stockholders' Agent and Parent shall negotiate in good faith for 15 days following Parent's receipt of such notice to resolve such objections. If Parent and the Stockholders' Agent are unable to resolve all objections during such 15-day period, then any remaining disputes, and only such remaining disputes, shall be resolved by the Accounting Firm. The Accounting Firm shall be instructed to resolve any such remaining Disputes in accordance with the terms of this Agreement within 30 days after its appointment. The fees, costs and expenses of the Accounting Firm shall be allocated equally between Parent, on the one hand, and the Eligible Stockholders, on the other hand.

10.5 Conveyance Taxes. The Eligible Stockholders and Parent shall each pay fifty percent (50%) of all sales, use, value added, transfer, stamp, registration, documentary, excise, real property transfer or gains, or similar Taxes incurred as a result of the transactions contemplated in this Agreement and the Eligible Stockholders and Parent shall jointly file all required change of ownership and similar statements.

10.6 FIRPTA Certificate. The Company shall deliver to Parent at the Closing a certificate or certificates, in compliance with Treasury Regulations Section 1.1445-2, certifying that the transactions contemplated hereby are exempt from withholding under Section 1445 of the Code.

11. MISCELLANEOUS

11.1 Stockholders' Agent.

(a) Appointment. By virtue of the adoption of this Agreement, the Eligible Stockholders irrevocably nominate, constitute and appoint Shareholder Representative Services LLC as the agent and true and lawful attorney in fact of the stockholders (the "Stockholders' Agent"), with full power of substitution, to act in the name, place and stead of the Eligible Stockholders for purposes of executing any documents and taking any actions that the Stockholders' Agent may, in its sole discretion, determine to be necessary, desirable or appropriate to carry out the intent of this Agreement, including any claims for indemnification, compensation or reimbursement under Article 5 and any amendment to this Agreement following the Effective Time. Shareholder Representative Services LLC hereby accepts its appointment as Stockholders' Agent.

(b) Authority. The Eligible Stockholders grant to the Stockholders' Agent full authority to execute, deliver, acknowledge, certify and file on behalf of such Eligible Stockholders (in the name of any or all of the Eligible Stockholders or otherwise) any and all documents that the Stockholders' Agent may, in its sole discretion, determine to be necessary, desirable or appropriate, in such forms and containing such provisions as the Stockholders' Agent may, in its sole discretion, determine to be appropriate, in performing its duties as contemplated by Section 11.1(a). Notwithstanding anything to the contrary contained in this Agreement or in any other agreement executed in connection with the transactions contemplated hereby: (i) each Indemnitee shall be entitled to deal exclusively with the Stockholders' Agent on all matters relating to this Agreement, including any claim for indemnification, compensation or reimbursement under Article 5; and (ii) each Indemnitee shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Eligible Stockholder by the Stockholders' Agent, and on any other action taken or purported to be taken on behalf of any Eligible Stockholder by the Stockholders' Agent, as fully binding upon such Eligible Stockholder.

(c) Power of Attorney. The Eligible Stockholders recognize and intend that the power of attorney granted in Section 11.1(a): (i) is coupled with an interest and is irrevocable; (ii) may be delegated by the Stockholders' Agent; and (iii) shall survive the death or incapacity of each of the Eligible Stockholders.

(d) Binding Power. The Eligible Stockholders shall be bound by all actions taken by the Stockholders' Agent in its capacity thereof pursuant to the authority granted in Sections 11.1(a) and (b). The Stockholders' Agent shall at all times act in its capacity as Stockholders' Agent in a manner that the Stockholders' Agent believes to be in the best interest of the Eligible Stockholders. Neither the Stockholders' Agent nor any of its directors, officers, agents or employees, if any, shall be liable to any Person for any error of judgment, or any action taken, suffered or omitted to be taken under this Agreement, except in the case of its gross negligence, bad faith or willful misconduct. The Stockholders' Agent may consult with legal counsel, independent public accountants and other experts selected by it. The Stockholders' Agent shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement. Each Eligible Stockholder shall indemnify, defend and hold harmless and reimburse the Stockholders' Agent from and against any and all liabilities, losses, Damages, claims, costs or expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Agent Losses") suffered or incurred by the Stockholders' Agent arising out of or in connection with the Stockholders' Agent's execution and performance of this Agreement, the Escrow Agreement and the Stockholders Agreement or any action taken or omitted to be taken by the Stockholders' Agent under this Agreement, the Escrow Agreement and the Stockholders Agreement, in each case as such Agent Loss is suffered or incurred; provided, that in the event that any such Agent Loss is finally adjudicated to have been primarily caused by the gross negligence, bad faith or willful misconduct of the Stockholders' Agent, the Stockholders' Agent will reimburse the Eligible Stockholders the amount of such indemnified Agent Losses attributable to such gross negligence, bad faith or willful misconduct. If not paid directly to the Stockholders' Agent by the Eligible Stockholders, any such Agent Losses may be recovered by the Stockholders' Agent from (i) the funds in the Escrow Expense Fund and (ii) the shares in the Escrow Amount at such time as remaining amounts would otherwise be distributable to the Eligible Stockholders; provided, that while this section allows the Stockholders' Agent to be paid from the Escrow Expense Fund and the Escrow Amount, this does not relieve the Eligible Stockholders from their obligation to promptly pay such Agent Losses as they are suffered or incurred, nor does it prevent the Stockholders' Agent from seeking any remedies available to it at law or otherwise. In no event will the Stockholders' Agent be required to advance its own funds on behalf of the Eligible Stockholders or otherwise. The Eligible Stockholders acknowledge and agree that the foregoing indemnities will survive the resignation or removal of the Stockholders' Agent or the termination of this Agreement. Notwithstanding anything to the contrary herein, the Stockholders' Agent

shall not in any manner exercise, or seek to exercise, any voting power whatsoever with respect to shares of capital stock of the Company or Parent now or hereafter owned of record or beneficially by any Eligible Stockholders unless the Stockholders' Agent is expressly authorized to do so in a writing signed by such Eligible Stockholders.

(e) Replacement. If the Stockholders' Agent shall resign, be dissolved or otherwise be unable to fulfill its responsibilities hereunder, the Eligible Stockholders shall (by consent of those Persons entitled to at least a majority of the Merger Consideration), within 10 days after such death, disability, resignation or inability, appoint a successor to the Stockholders' Agent (who shall be reasonably satisfactory to Parent) and immediately thereafter notify Parent of the identity of such successor. Any such successor shall succeed the Stockholders' Agent as Stockholders' Agent hereunder. If for any reason there is no Stockholders' Agent at any time, all references herein to the Stockholders' Agent shall be deemed to refer to the Eligible Stockholders.

11.2 Further Assurances; Limitations. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

11.3 Fees and Expenses. Subject to Section 11.1(d), each party to this Agreement shall bear and pay all fees, costs and expenses that have been incurred or that are incurred in the future by such party in connection with the transactions contemplated by this Agreement, including all fees, costs and expenses incurred by such party in connection with or by virtue of: (a) the negotiation, preparation and review of this Agreement (including the Disclosure Schedule) and all agreements, certificates, opinions and other instruments and documents delivered or to be delivered in connection with the transactions contemplated by this Agreement; (b) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any Consent required to be obtained in connection with any of such transactions; and (c) the consummation of the Merger.

11.4 Attorneys' Fees. If any Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

11.5 Notices. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received: (a) if delivered by hand, when delivered; (b) if sent via facsimile with confirmation of receipt, when transmitted and receipt is confirmed; (c) if sent by electronic mail, telegram, cablegram or other electronic transmission, upon delivery; (d) if sent by registered, certified or first class mail, the third Business Day after being sent; and (e) if sent by overnight delivery via a national courier service, one Business Day after being sent, in each case to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

If to Parent or Merger Sub:

Viggle Inc.
902 Broadway, 11th Floor
New York, NY 10010
Attention: Robert F.X. Sillerman,
Chief Executive Officer
Facsimile: (646) 349-5988

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

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Attention: Dennis Block, Esq.
Margaret Butler, Esq.
(212) 805-5555
(212) 805-9284

Facsimile:

If to the Company:

wetpaint.com, inc.
710 Second Avenue, Suite 1100
Seattle, WA 98104
Attention: Chief Executive Officer
Facsimile: (206) 859-6301

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

Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304
Attention: Buddy Arnheim
Facsimile: (650) 838-4350

If to the Stockholders' Agent:

Shareholder Representative Services LLC
1614 15th Street, Suite 200
Denver, CO 80202
Attention: Managing Director
Email: deals@shareholderrep.com
Facsimile: (303) 623-0294
Telephone: (303) 648-4085

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

Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304
Attention: Buddy Arnheim
Facsimile: (650) 838-4350

Notwithstanding anything to the contrary contained herein, any notice received on any Business Day after 5:00 p.m. (addressee's local time) or on a day that is not a Business Day shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day.

11.6 Headings. The bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

11.7 Counterparts and Exchanges by Electronic Transmission or Facsimile This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in PDF format or by facsimile shall be sufficient to bind the parties to the terms and conditions of this Agreement.

11.8 Governing Law; Dispute Resolution.

(a) Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York (without giving effect to principles of conflicts of laws).

(b) Venue. Any Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement (including a Legal Proceeding based upon intentional misrepresentation or fraud) may be brought or otherwise commenced in any state or federal court located in the Borough of Manhattan in the State of New York. Each party to this Agreement: (i) expressly and irrevocably consents and submits to the exclusive jurisdiction of each state and federal court located in the Borough of Manhattan in the State of New York (and each appellate court located in the State of New York) in connection with any such Legal Proceeding; (ii) agrees that each state and federal court located in the Borough of Manhattan in the State of New York shall be deemed to be a convenient forum; and (iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such Legal Proceeding commenced in any state or federal court located in the Borough of Manhattan in the State of New York, any claim that such party is not subject personally to the jurisdiction of such court, that such Legal Proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

11.9 Successors and Assigns. Except as provided below, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the parties hereto in whole or in part (whether by operation of law or otherwise) without the prior written consent of the other parties and any attempt to make any such assignment without such consent shall be null and void; provided, that after the Effective Time, Parent may freely assign any or all of its rights under this Agreement (including its indemnification rights under Article 5), in whole or in part, to any other Person without obtaining the consent or approval of any other party hereto or of any other Person. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by: (a) the Company and its successors and assigns (if any); (b) Parent and its successors and assigns (if any); and (c) Merger Sub and its successors and assigns (if any).

11.10 Specific Performance. The parties to this Agreement agree that irreparable damage would occur in the event that the provisions contained in this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that in the event of any breach or threatened breach by any party to this Agreement of any covenant, obligation or other provision set forth in this Agreement, for the benefit of any other party to this Agreement: (a) such other party shall be entitled (in addition to any other remedy that may be available to it at law or in equity) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach; and (b) such other party shall not be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or Legal Proceeding.

11.11 Waiver. No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.13 Amendments. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered: (a) prior to the Effective Time, by the parties hereto by action taken by or on behalf of their respective boards of directors; provided, however, that no amendment of this Agreement shall be made, that by Legal Requirements or in accordance with the rules of any stock exchange requires approval by the stockholders of the Company and/or requires approval of the stockholders of Parent, without obtaining such approval; and (b) after the Effective Time, on behalf of Parent and the Stockholders' Agent (acting exclusively for and on behalf of all of the Eligible Stockholders).

11.14 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent by any court of competent jurisdiction, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law and the parties shall use their commercially reasonable efforts to substitute a valid, legal and enforceable provision which, insofar as practicable, implements the original purposes and intents of this Agreement.

11.15 Parties-in-Interest. Except for the provisions of Section 4.2 (Directors' and Officers' Indemnification and Insurance) and Article 5 (Indemnification), none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties hereto and their respective successors and assigns (if any). With the exception of the generality of the foregoing, no Company Employee (other than as an Eligible Stockholder or as set forth in Section 4.2) shall have any rights

remedies under any of the provisions of this Agreement.

11.16 Entire Agreement. This Agreement and the other agreements and documents delivered by the parties in connection herewith constitute the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof; provided, however, that the Non-Disclosure Agreement shall not be superseded by this Agreement and shall remain in effect in accordance with its terms until the earlier of: (a) the Effective Time; or (b) the date on which such Non-Disclosure Agreement is terminated in accordance with its terms.

11.17 Construction.

(a) Gender; Etc. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless indicated otherwise, terms defined in the singular have the corresponding meanings in the plural, and vice versa. Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words "hereof," "hereto," "hereby," "herein," "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular section or article in which such words appear. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day. The use of "or" is not intended to be exclusive unless expressly indicated otherwise. No provision of this Agreement shall be construed to require the Company, Parent or Merger Sub, or any of their respective Subsidiaries or affiliates to take action that would violate applicable Legal Requirements. Unless otherwise indicated, all sums of money referred to in this Agreement, including references to "dollars" or "\$", are expressed in lawful money of the United States of America.

(b) Ambiguities. Each party hereto acknowledges that it and its attorney has reviewed this Agreement and agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) Including. As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) References. All article, section, schedule, exhibit and annex references used in this Agreement are to articles, sections, schedules, exhibits and annexes to this Agreement unless otherwise specified. All terms defined in this Agreement shall have their defined meanings when used in any Annex, Exhibit or Schedule to this Agreement or any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein. The schedules, exhibits and annexes attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes. The table of contents and captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

[Remainder of page intentionally left blank]

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

VIGGLE INC.

By: _____
Name: _____
Title: _____

VIGGLE MERGER SUB INC.

By: _____
Name: _____
Title: _____

WETPAINT.COM, INC.

By: _____
Name: _____
Title: _____

**[WETPAINT.COM SIGNATORY
STOCKHOLDERS]**

By: _____
Name: _____
Title: _____

**SHAREHOLDER REPRESENTATIVE SERVICES
LLC, solely in its capacity as Stockholders' Agent**

By: _____
Name: _____
Title: Managing Director

CERTAIN DEFINITIONS

For purposes of the Agreement (including this Annex I):

"Accounting Firm" shall mean an independent auditor of recognized national standing jointly selected by Parent and the Stockholders' Agent.

"Affiliate" shall mean any affiliate, as defined in Rule 12b-2 under the Exchange Act.

"Agreement" shall mean the Agreement and Plan of Merger to which this Annex I is attached (including the Disclosure Schedule, the Parent Disclosure Schedule, and all other exhibits, schedules and annexes hereto), as it may be amended from time to time.

"Aggregate Closing Date Cash Consideration" shall mean an aggregate amount of cash equal to \$1,133,500, *plus* Cash On Hand, *less* the Closing Date Transaction Expenses, *less* the Closing Date Escrow Expense Fund Amount, *less* the Closing Date Management Cash Transaction Bonus Payments, *less* the Closing Bonus Payments.

"Aggregate Closing Date Stock Consideration" shall mean a number of restricted (within the meaning of Rule 144 under the Securities Act) shares of Parent Common, subject however, to the rights granted to the Sellers under the Registration Rights Agreement, equal to (x) \$18,016,667 divided by (y) the Average Per Share Price as of the Closing Date, as adjusted pursuant to Sections 1.5(b)(ii) and 1.8.

"Aggregate Final Payment Date Cash Consideration" shall mean \$3,366,500.00, *less* the Final Payment Date Transaction Expenses, *less* the Final Payment Date Escrow Expense Fund Amount, *less* the Final Payment Date Management Cash Transaction Bonus Payments, as adjusted pursuant to Sections 1.5(b)(i) and 1.7(e).

"Aggregate Liquidation Preference" shall mean an amount equal to the Series A Preferred Liquidation Preference, *plus* the Series B Preferred Liquidation Preference, *plus* the Series C Preferred Liquidation Preference.

"Average Per Share Price" means (a) for purposes of Article 1, Exhibit M and the definitions for Aggregate Closing Date Stock Consideration and "Escrow Amount", \$0.503 per share of Parent Common Stock, subject to adjustment for stock splits and dividends, and (b) for the purposes of Sections 5.5 and 5.6, the average closing price per share of Parent Common Stock as reported on the over-the-counter-bulletin board (or, if listed on the date of such measurement, a national securities exchange) for the ten (10) consecutive trading-day period ending on the second (2nd) trading day immediately preceding measurement (rounded down to the nearest tenth of a cent).

"Balance Sheet Rules" shall mean, collectively, the accounting principles, methods and practices used in preparing the Company Financial Statements, applied on a consistent basis and in accordance with GAAP.

"Business Day" shall mean any day that is not a Saturday, Sunday or legal holiday in New York City or a federal holiday in the United States.

"Cash On Hand" shall mean the Company's cash on hand, including, but not limited to, the amount delivered pursuant to the Note, at Closing.

"Claimed Shares" shall mean such number of shares of Parent Common Stock equal to the quotient of (a) all outstanding Claimed Amounts, divided by (b) the Per Share Price as of the applicable Distribution Date.

"Closing Date Escrow Expense Fund Amount" shall mean an aggregate amount of cash equal to \$4,491.44.

"Closing Date Management Cash Transaction Bonus Payments" shall mean the cash bonus payments set forth on Exhibit J and identified as "Closing Date Management Cash Transaction Bonus Payments".

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Common Per Share Closing Date Cash Consideration" shall mean \$0.00.

"Common Per Share Closing Date Stock Consideration" shall mean zero (0) shares of Parent Common Stock.

"Common Per Share Final Payment Date Cash Consideration" shall mean \$0.00.

"Company Capital Stock" shall mean the shares of Company Common Stock and Company Preferred Stock.

"Company Contract" shall mean any Contract to which the Company is a party.

"Company Databases" shall have the meaning set forth in Section 2.10(i).

"Company Employee" shall mean any current or former employee, independent contractor or director of the Company.

"Company Employee Agreement" shall mean each management, employment, severance, change in control, consulting, relocation, repatriation or expatriation agreement or other Contract between the Company, on the one hand, and any Company Employee, on the other hand, other than any such management, employment, severance, change in control, consulting, relocation, repatriation or expatriation agreement or other Contract with a Company Employee which is terminable "at will" without any obligation on the part of the Company to make any payments or provide any benefits in connection with such termination.

"Company Employee Plan" shall mean any plan, program, policy, practice, Contract or other arrangement providing for compensation (other than base wage or salary), severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, that is maintained, contributed to, or required to be contributed to, by the Company for the benefit of any Company Employee, or with respect to which the Company has any Liability or obligation, excluding any Company Employee Agreement, but including any employee benefit plans as defined in Section 3 of ERISA.

"Company IP" shall mean all Intellectual Property and Intellectual Property Rights in which the Company or any of its Subsidiaries has (or purports to have) an ownership interest or an license .

"Company IP Contract" shall mean any written Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound, that contains any assignment or license of, or any covenant not to assert or enforce, any Intellectual Property Right or Company IP or any Intellectual Property developed by, with or for the Company.

"Company Material Adverse Effect" shall mean any change, event, effect, claim, circumstance or matter (each, an Effect) that (considered together with all other Effects) is, or would reasonably be expected to be, materially adverse to: (i) the business, financial condition, assets, Liabilities, operations or results of operations of the Company or (ii) the ability of the Company or the Surviving Corporation to perform any of its material covenants or obligations under this Agreement; provided that none of the following shall be taken into account in determining whether there has been a Company Material Adverse Effect: any Effect to the extent attributable to: (a) changes in general economic, business or political conditions or the securities markets in general; (b) changes in or affecting the industries in which Company operate; (c) an earthquake or other natural disaster; (d) a change in applicable Legal Requirements (or change in the enforcement of any Legal Requirements by any Governmental Body or GAAP, (e) the commencement, continuation or escalation of a war, civil unrest, material armed hostilities or other material international or national calamity or act of terrorism, and (f) changes, effects or circumstances resulting from the announcement or pendency of this Agreement or the consummation of the transactions contemplated by this Agreement or compliance with the terms of this Agreement (including the loss or departure of employees or adverse developments in relationships with suppliers, or other business partners), but not including, for the avoidance of doubt, any breach or violation of a material contract resulting from the Company's execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby which, in the case of any of the foregoing clauses (a) through (e) does not disproportionately affect the Company relative to other companies in the industries in which it operates.

"Company Offerings" means any products or services developed, manufactured, offered, provided, sold or otherwise distributed by or for the Company or any of its Subsidiaries, including any products or service offerings under development that form the basis, in whole or in part, of any revenue or business projection provided to Parent.

"Company Option" shall mean an option to purchase shares of Company Common Stock granted pursuant to the Company Option Plan.

"Company Option Plan" shall mean the Company's 2005 Equity Incentive Plan, as amended from time to time.

"Company-Owned IP" shall have the meaning set forth in Section 2.10(e)(i).

"Company Privacy Policy" shall mean each external or internal, past or present privacy policy of the Company, including any policy relating to: (a) the privacy of users of any website owned or operated by the Company; (b) the collection, storage, disclosure, and transfer of any User Data or Personal Data; and (c) any employee information.

"Company Registered IP" shall mean all Intellectual Property Rights in Company-Owned IP that are registered, filed or issued under the authority of, with or by any Governmental Body, including all patents, registered copyrights, registered trademarks and all applications for any of the foregoing.

"Company Related Party" shall mean: (a) each current executive officer or director of the Company, and (b) any owner of more than ten percent (10%) of the voting power of the outstanding capital stock of the Company.

"Company Stockholder Approval" shall mean approval of the adoption of this Agreement and the consummation of the transactions contemplated hereby by the Required Merger Stockholder Votes in accordance with the DGCL and the Company's Charter Documents.

"Consent" shall mean any approval, clearance, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

"Contract" shall mean any written, oral or other agreement, contract, subcontract, lease, license, sublease, sublicense, understanding, arrangement, instrument, note, warranty, insurance policy, benefit plan or legally binding commitment or undertaking of any nature.

"Continuing Employee" shall mean (i) each employee of the Company who becomes an employee of the Surviving Corporation, Parent or any of their respective Subsidiaries following the Effective Time and (ii) except with respect to Section 4.1, each advisor or consultant of the Company who becomes an advisor or consultant of the Surviving Corporation, Parent or any of their respective Subsidiaries following the Effective Time.

"Damages" shall include any loss, damage, injury, Liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee (including reasonable attorneys' fees), charge, cost (including costs of investigation) or expense of any nature (excluding any consequential, incidental, indirect, punitive or special damages, decline in value and lost opportunity or profit) actually incurred; provided that, for the avoidance of doubt, any such damages required to be paid by an indemnitee to a third party shall be considered "Damages" subject to indemnification under the Agreement.

"Distribution Date" shall mean the Initial Distribution Date and each Post-Initial Distribution Date.

"Eligible Stockholders" shall mean the Non-Dissenting Stockholders.

"Encumbrance" shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, title defect or objection, equitable interest, option, easement, right of way, preference, priority, right of first refusal, condition, limitation or restriction of any nature any agreement to grant any of the foregoing.

"Entity" shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

"Environment" includes: (a) any and all buildings, structures, fixtures, fittings, appurtenances, pipes, conduits, valves, tanks, vessels and containers whether above or below ground level; and (b) ambient air, land surface, sub-surface strata, soil, surface water, ground water, river sediment, marshes, wet lands, flora and fauna.

"Environmental Law" shall mean: (a) the common law; and (b) all Legal Requirements, by-laws, orders, instruments, directives, decisions, injunctions and judgments of any government, local government, international, supranational, executive, administrative, judicial or regulatory authority or agency and all approved codes of practice (whether voluntary or compulsory) relating to the protection of the Environment or of human health or safety or welfare or to the manufacture, formulation, processing, treatment, storage, containment, labeling, handling, transportation, distribution, recycling, reuse, release, disposal, removal, remediation, abatement or clean-up of any Contaminant or to the packaging of any product, and any amendment thereto and any and all regulations, orders and notices made or served thereunder or pursuant thereto).

"Environmental License" means any Consent or Governmental Approval required by or pursuant to any applicable Environmental Laws.

"Environmental Release" means the spilling, leaking, pumping, pouring, emitting, releasing, emptying, discharging, injecting, escaping, leaching, dumping, leaving, discarding or disposing of any Contaminant into or upon the Environment.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Escrow Amount" shall mean a number of restricted (within the meaning of Rule 144 under the Securities Act) shares of Parent Common, subject however, to the rights granted to the Sellers under the Registration Rights Agreement equal to (x) \$3,750,000 divided by (y) the Average Per Share Price as of the Closing Date, and subject to adjustment pursuant to Section 1.5(b)(iii) and Articles 5 and 6.

"Escrow Expense Fund" shall mean an aggregate amount of cash equal the Closing Date Escrow Expense Fund Amount *plus* Final Payment Date Escrow Expense Fund Amount, and subject to adjustment pursuant to Section 1.5(b)(iv) and Section 6.2.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Final Payment Date" shall mean the earlier of (i) a date within three Business Days following the closing of a Subsequent Public Offering and (ii) February 15, 2014.

"Final Payment Date Escrow Expense Fund Amount" shall mean an aggregate amount of cash equal to \$45,508.56.

"Final Payment Date Management Cash Transaction Bonus Payments" shall mean the cash bonus payments set forth on Exhibit J and identified as "Final Payment Date Management Cash Transaction Bonus Payments".

"Final Resolution" (a) a final, non-appealable order or judgment from a court of competent jurisdiction that resolves any dispute arising under, in connection with or relating to this Agreement or (b) a written agreement executed by Parent and the Stockholders' Agent that resolves any dispute arising under, in connection with or relating to this Agreement.

"Fully-Diluted Shares" shall mean, as of any given time, all issued and outstanding shares of Parent Common Stock and all options, warrants and all other securities that are either exercisable or convertible into shares of Parent Common Stock, on an as-converted basis, but excluding: (a) any out-of-the-money options or warrants securities except those issued in the Recapitalization, and any management and director options or warrants securities that were out-of-the-money when issued, (b) any shares of Parent Common Stock or options, warrants or convertible securities issued in connection with capital-raising transactions between the Closing Date and the closing of the public offering of the securities of Parent (provided that the Eligible Stockholders are given preemptive rights to participate in such capital-raising transactions, to the extent required to prevent their dilution on the same terms as the investors in such transactions), (c) any shares of Parent Common Stock or Parent convertible securities issued in the public offering of the securities of Parent, and (d) any shares issued in connection with mergers and acquisitions transactions by Parent (other than the transactions contemplated by this Agreement).

"GAAP" shall mean generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances of the date of determination, consistently applied.

"Governmental Authorization" shall mean (a) any permit, license, certificate, franchise, permission, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement; or (b) any right under any Contract with any Governmental Body.

"Governmental Body" shall mean any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or Entity and any court or other tribunal).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Indemnitees" shall mean the Parent Indemnitees and the Stockholder Indemnitees, as applicable.

"Indemnitors" shall mean the Stockholder Indemnitors or Parent, as the case may be.

"Indebtedness" shall mean, with respect to any Person, (a) all indebtedness of such Person, for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss, and (i) all indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien, mortgage or other encumbrance on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness.

"Intellectual Property" means any and all: (i) technology, formulae, algorithms, procedures, processes, methods, techniques, know-how, ideas, creations, inventions, discoveries, and improvements (whether patentable or unpatentable and whether or not reduced to practice), (ii) technical, engineering and manufacturing information and materials, (iii) specifications, designs, models, devices, prototypes, schematics and development tools, (iv) software, websites, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, and other works of authorship and copyrightable subject matter, including without limitation computer source code and object code, blueprints, engineering drawings, printed or graphic matter (including all preparatory materials such as sketches, drafts, outtakes, outlines and drawings), and any audiovisual works, artwork, designs, photographs, films, slides, music, and mechanicals ("Works of Authorship"), (v) databases and other compilations and collections of data or information, (vi) trademarks, service marks, logos and design marks, trade dress, trade names, fictitious and other business names, and brand names, together with all goodwill associated with any of the foregoing, domain names, uniform resource locators, social media user account names, and other names and locators associated with the Internet (collectively "Trademarks"), (viii) information and materials not generally known to the public, including trade secrets and other confidential and proprietary information, such as product, marketing, servicing, financial, supplier, and personnel information, customer lists, customer contact and registration information, customer correspondence and customer purchasing histories, and (ix) tangible embodiments of any of the foregoing, in any form or media whether or not specifically listed herein.

"Intellectual Property Rights" means any and all rights (anywhere in the world, whether statutory, common law or otherwise) relating to, arising from, or associated with Intellectual Property, including without limitation: (i) patents and patent applications, utility models and applications for utility models, inventor's certificates and applications for inventor's certificates, and invention disclosure statements, (ii) copyrights and all other rights with respect to Works of Authorship and all registrations thereof and applications therefor (including moral, economic and other industrial property rights, however denominated), (iii) other rights with respect to software, including registrations thereof and applications therefor, (iv) industrial design rights and registrations thereof and applications therefor, (v) rights with respect to Trademarks, and all registrations thereof and applications therefor, (vi) rights with respect to trade secrets, including rights to limit the use or disclosure thereof, (vii) rights with respect to databases, including copyright registrations thereof and copyright applications therefor, (viii) publicity and privacy rights, including all rights with respect to use of any person's name, signature, likeness, image, photograph, voice, identity, personality, and biographical and personal information and materials and (ix) any rights equivalent or similar to any of the foregoing.

An individual shall be deemed to have "Knowledge" of a particular fact or other matter if such individual has actual or constructive knowledge, after due inquiry, of such fact or other matter. The Company shall be deemed to have "Knowledge" of a particular fact or other matter if Ben Elowitz or Rob Grady has Knowledge of such fact or other matter. Parent shall be deemed to have "Knowledge" of a particular fact or other matter if Robert F.X. Sillerman, Greg Consiglio, John Small or Tom McLean has Knowledge of such fact or other matter.

"Leased Real Property" shall mean the Company Leased Real Property and/or the Parent Leased Real Property.

"Legal Proceeding" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body or any arbitrator or arbitration panel.

"Legal Requirement" shall mean any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling, order or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"Liability" shall mean any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

"Management Bonus Plan" shall mean the written document setting forth the terms and conditions of the Company's Cash Incentive Program (Company Transactions), as amended from time to time.

"Management Cash Transaction Bonus Payments" shall mean the Closing Date Management Cash Transaction Bonus Payments and the Final Payment Date Management Cash Transaction Bonus Payments, collectively, as set forth on Exhibit J.

"Merger Consideration" shall mean with respect to each share of Company Capital Stock outstanding as of the Effective Time, such number of validly issued, fully paid and nonassessable shares of Parent Common Stock and such amount cash to be issued in exchange therefor in accordance with Section 1.5(a) of this Agreement, including, without limitation, the applicable portion of the Escrow Amount.

"Net Working Capital" means current assets of the Company, which shall not include Cash On Hand, minus the current liabilities of the Company, which shall not include the Transaction Expenses, any outstanding principal due to Parent under the Note, Management Cash Transaction Bonus Payments and Closing Bonus Payments, as further determined consistent with the Sample Net Working Capital Calculation set forth in Exhibit G, calculated immediately before, and without giving effect to, the Closing.

"Non-Disclosure Agreement" shall mean that certain Non-Disclosure Agreement dated as of August 15, 2012, between Parent and the Company.

"Non-Dissenting Stockholder" shall mean each stockholder of the Company that does not perfect such stockholder's appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Article 1.

"Open Source Software" means any software generally available to the public in source code form under licenses approved by the Open Source Initiative, which licenses include without limitation the GNU General Public License, the GNU Lesser Public License, the Mozilla Public License, the Berkeley Science Division (BSD) License, and the Apache License.

"Order" means any order, decision, judgment, writ, injunction, decree, award or other determination of any Governmental Body.

"Organizational Document" shall mean, with respect to any Person that is not a natural person, such Person's charter, certificate or articles of incorporation or formation, bylaws, memorandum and articles of association, operating agreement, limited liability company agreement, partnership agreement, limited partnership agreement, limited liability partnership agreement or other constituent or organizational documents of such Person.

"Parent Capital Stock" shall mean the shares of Parent Common Stock and Parent Preferred Stock.

"Parent Common Stock" shall mean the common stock, par value \$0.001 per share, of Parent together with each Right relating thereto.

"Parent Debt" shall mean any debt payable by Parent to Robert F.X. Sillerman or any of his Affiliates.

"Parent Incentive Plan" means the Parent 2011 Executive Incentive Plan, as amended from time to time.

"Parent Indemnitees" shall mean Parent and its affiliates (including, after the Effective Time, the Surviving Corporation) and their respective officers, directors, employees, successors and assigns; provided, however, that the Eligible Stockholders shall not be deemed to be "Parent Indemnitees."

"Parent Leased Real Property" shall mean all real property leased to Parent and its Subsidiaries, including all buildings, structures, fixtures and other improvements leased to Parent and its Subsidiaries.

"Parent Material Adverse Effect" shall mean any Effect that (considered together with all other Effects) is, or would reasonably be expected to be, materially adverse to: (i) the business, financial condition, assets, Liabilities or results of operations of Parent and its Subsidiaries, taken as a whole or (ii) the ability of Parent or Merger Sub to perform any of its material covenants or obligations under this Agreement; provided that none of the following shall be taken into account in determining whether there has been a Parent Material Adverse Effect: any Effect to the extent attributable to: (a) changes in general economic, business or political conditions or the securities markets in general; (b) changes in or affecting the industries in which Parent and its Subsidiaries operate; (c) an earthquake or other natural disaster; (d) a change in applicable Legal Requirements (or change in the enforcement of any Legal Requirements by any Governmental Body) or GAAP, (e) the commencement, continuation or escalation of a war, civil unrest, material armed hostilities or other material international or national calamity or act of terrorism, (f) changes, effects or circumstances resulting from the announcement or pendency of this Agreement or the consummation of the transactions contemplated by this Agreement or compliance with the terms of this Agreement (including the loss or departure of employees or adverse developments in relationships with suppliers, or other business partners), but not including, for the avoidance of doubt, any breach or violation of a

contract resulting from the Parent's execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby , in the case of any of the foregoing clauses (a) through (e) does not disproportionately affect Parent and its Subsidiaries, taken as a whole, relative to other companies in the industries in which it operates.

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"Parent Option" shall mean each option to purchase shares of Parent Common Stock (or exercisable for cash) outstanding under the Parent Incentive Plans or otherwise.

"Parent Related Party" shall mean: (a) each current executive officer or director of Parent or any Subsidiary of Parent; and (b) any owner of more than ten percent (10%) of the voting power of the outstanding capital stock of Parent.

"Parent Restricted Stock Unit" means a right to receive shares of Parent Common Stock at such time and in accordance with such terms and conditions of the Parent Incentive Plan and the Parent Restricted Stock Unit Grant Agreement evidencing the award.

"Permitted Encumbrances" shall mean (a) Encumbrances for Taxes, assessments and other governmental levies, fees or charges not yet due and payable or which the taxpayer is contesting in good faith; (b) cashiers', landlords', mechanics', materialmens', carriers', workmens', repairmens', contractors' and warehousemens' Liens and similar Liens incurred in the ordinary course of business for amounts which are not delinquent and which would not, in the aggregate, be material; (c) zoning, building codes and other land use Legal Requirements regulating the use or occupancy of any Company Leased Property or Parent Leased Property or the activities conducted thereon which are imposed by any Governmental Body having jurisdiction over such Leased Real Property, and which are not violated by the current use or occupancy of such Leased Real Property or the operation of the Company or the Parent and its Subsidiaries, as applicable; (d) purchase money Encumbrances securing rental payments under capital lease or operating lease arrangements; (e) minor Encumbrances that have arisen in the ordinary course of business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of the Company; and (f) easements, covenants, conditions, rights of way, restrictions and other similar charges and encumbrances of record and other encroachments and title and survey defects, none of which interfere materially with the ordinary conduct of the Company or the Parent and its Subsidiaries, as applicable, or detract materially from the use, occupancy, value or marketability of title of the assets subject thereto.

"Person" shall mean any individual, Entity or Governmental Body.

"Personal Data" shall mean a natural person's name, street address, telephone number, e-mail address, photograph, social security number, driver's license number, passport number, or customer or account number, or any other piece of information that allows the identification of a natural person.

"Pre-Closing Tax Period" shall mean a Tax period or portion thereof ending on or before the Closing Date and, with respect any Tax period that includes but does not end on the Closing Date, the portion of the period that ends on the Closing Date.

"Proprietary Software" means any Software that has been distributed by the Company or its Subsidiaries in object code form only (or that is available in source code form only upon the occurrence of an event such as cessation of business or business distress, such as part of a software code escrow).

"Pro Rata Portion" means, with respect to any share of Company Capital Stock or any Eligible Stockholder, a fraction, the numerator of which is equal to the Aggregate Closing Date Stock Consideration received by such share of Company Capital Stock or Eligible Stockholder and a denominator equal to the Aggregate Closing Date Stock Consideration received by all shares of Company Capital Stock or Eligible Stockholders...

"Recapitalization" shall mean a transaction by Parent taking place after the Closing Date and on or prior to the earlier of (a) a Subsequent Public Offering and (b) December 31, 2015, involving any of the following: (i) the conversion of more than 50% of the Parent Debt into preferred equity securities of Parent or into Parent Common Stock, or (ii) the conversion of more than 50% of Parent's preferred equity securities into Parent Common Stock and warrants.

"Representatives" shall mean officers, directors, employees, agents, attorneys, accountants, advisors and representatives.

"Sarbanes-Oxley Act" shall mean the Sarbanes-Oxley Act of 2002.

"SEC" shall mean the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Series A Preferred Liquidation Preference" shall mean the quotient obtained by multiplying \$1.00 by the number of outstanding shares of Company Series A Preferred Stock immediately prior to the Effective Time.

"Series A Preferred Percentage" shall mean the percentage obtained by dividing the Series A Preferred Liquidation Preference by the Aggregate Liquidation Preference.

"Series A Preferred Per Share Closing Date Cash Consideration" shall mean an amount of cash equal to (i) the Aggregate Closing Date Cash Consideration multiplied by the Series A Preferred Percentage, divided by (ii) the number of outstanding shares of Company Series A Preferred Stock immediately prior to the Effective Time.

"Series A Preferred Per Share Closing Date Stock Consideration" shall mean a number of shares of Parent Common Stock equal to (i) the Aggregate Closing Date Stock Consideration multiplied by the Series A Percentage, divided by (ii) the number of outstanding shares of Company Series A Preferred Stock immediately prior to the Effective Time.

"Series A Preferred Per Share Final Payment Date Cash Consideration" shall mean an amount of cash equal to (i) the Aggregate Final Payment Date Cash Consideration multiplied by the Series A Percentage, divided by (ii) the number of outstanding shares of Company Series A Preferred Stock immediately prior to the Effective Time.

"Series B Preferred Liquidation Preference" shall mean the quotient obtained by multiplying \$2.7143 by the number of outstanding shares of Company Series B Preferred Stock immediately prior to the Effective Time.

"Series B Preferred Percentage" shall mean the percentage obtained by dividing the Series B Preferred Liquidation Preference by the Aggregate Liquidation Preference.

"Series B Preferred Per Share Closing Date Cash Consideration" shall mean an amount of cash equal to (i) the Aggregate Closing Date Cash Consideration multiplied by the Series B Preferred Percentage, divided by (ii) the number of outstanding shares of Company Series B Preferred Stock immediately prior to the Effective Time.

"Series B Preferred Per Share Closing Date Stock Consideration" shall mean a number of shares of Parent Common Stock equal to (i) the Aggregate Closing Date Stock Consideration multiplied by the Series B Preferred Percentage, divided by (ii) the number of outstanding shares of Company Series B Preferred Stock immediately prior to the Effective Time.

"Series B Preferred Per Share Final Payment Date Cash Consideration" shall mean an amount of cash equal to (i) the Aggregate Final Payment Date Cash Consideration multiplied by the Series B Preferred Percentage, divided by (ii) the number of outstanding shares of Company Series B Preferred Stock immediately prior to the Effective Time.

"Series C Preferred Liquidation Preference" shall mean the quotient obtained by multiplying \$10.06 by the number of outstanding shares of Company Series B Preferred Stock immediately prior to the Effective Time.

"Series C Preferred Percentage" shall mean the percentage obtained by dividing the Series C Preferred Liquidation Preference by the Aggregate Liquidation Preference.

"Series C Preferred Per Share Closing Date Cash Consideration" shall mean an amount of cash equal to (i) the Aggregate Closing Date Cash Consideration multiplied by the Series C Preferred Percentage, divided by (ii) the number of outstanding shares of Company Series A Preferred Stock immediately prior to the Effective Time.

"Series C Preferred Per Share Closing Date Stock Consideration" shall mean a number of shares of Parent Common Stock equal to (i) the Aggregate Closing Date Stock Consideration multiplied by the Series C Percentage, divided by (ii) the number of outstanding shares of Company Series C Preferred Stock immediately prior to the Effective Time.

"Series C Preferred Per Share Final Payment Date Cash Consideration" shall mean an amount of cash equal to (i) the Aggregate Final Payment Date Cash Consideration multiplied by the Series C Preferred Percentage, divided by (ii) the number of outstanding shares of Company Series C Preferred Stock immediately prior to the Effective Time.

"Stockholder Indemnitees" shall mean each Eligible Stockholder and such Eligible Stockholder's respective Affiliates, and their respective successors and assigns.

"Subsequent Public Offering" shall mean the closing of a public offering of equity securities pursuant to an effective S-1 in which Parent raises at least \$20,000,000 in net cash proceeds.

An Entity shall be deemed to be a "Subsidiary" of another Person if such Person directly or indirectly owns or purports to own, beneficially or of record: (a) an amount of voting securities of or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity's board of directors or other governing body; or (b) at least 50% of the outstanding equity, voting, beneficial or financial interests in such Entity.

"Tax" or "Taxes" shall mean, however denominated, any and all taxes, assessments, customs, duties, levies, fees, tariffs, imposts, deficiencies and other governmental charges in the nature of taxes of any kind whatsoever (including, but not limited to, taxes on or with respect to net or gross income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, real property transfer, transfer gains, transfer taxes, inventory, escheats, unclaimed property, capital stock, license, payroll, employment, social security, unemployment, severance, occupation, real or personal property, estimated taxes, rent, excise, occupancy, recordation, bulk transfer, intangibles, alternative minimum, doing business, withholding and stamp and taxes arising under Treasury Regulation Section 1.1502-6 (or any comparable state or local Law) as a transferee or successor, by contract, or otherwise), together with any interest thereon, penalties, additions to tax or additional amounts with respect thereto, imposed by any federal, state or local taxing authority of any jurisdiction, regardless of whether any such taxes, impositions, duties, contributions, charges and levies are chargeable directly or primarily against or attributable directly or primarily to the Company, or any other Person and of whether any amount in respect of any of them is recoverable from any other Person.

"Tax Return" shall mean any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate, claim for refund or other document or information, including any schedule or attachment thereto or any amendment thereof, filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Tax Benefit" means the present value of any refund, credit, increased net operating loss, or reduction in otherwise required Tax payments, including any interest payable thereon, of any Indemnitee, (i) using the Tax rate applicable to the highest level of income with respect to such Tax under the applicable Tax law on such date and assuming sufficient income in all applicable Tax periods to use such benefits, and (ii) using the interest rate on such date imposed on corporate deficiencies paid within 30 days of a notice of proposed deficiency under the Code or applicable Tax law. Any Tax Benefit shall be computed net of any related Tax cost (which shall be computed in the same manner in which Tax Benefits are otherwise computed).

"Transaction Documents" means this Agreement and the Stockholders Agreement, the Nomination Agreement, the Employment Agreements, the Registration Rights Agreement and the Lockup Agreement.

"Transaction Expenses" shall mean the payouts and fees listed on Exhibit H required to be made by the Company as a result of the transactions contemplated by this Agreement.

"User Data" shall mean any Personal Data collected by or on behalf of the Company, or the Parent or of its Subsidiaries, as applicable, from users of any website owned or operated by the Company, or the Parent or any Subsidiary of the Parent, as applicable.

"Working Capital Target" shall mean negative \$127,500 (Negative One Hundred Twenty Seven Thousand Five Hundred Dollars).

In addition, the following terms have the meanings set forth in the Sections indicated in the table below:

Defined Term	Location of Definition
401(k) Plans	Section 4.1(a)
Agent Losses	Section 11.1(d)
Agreed Amount	Section 5.5 (b)
Adjustment Amount	Section 1.7(a)(i)
Allocation Spreadsheet	Section 1.6(b)
Certificate of Merger	Section 1.3
Charter Documents	Section 2.2
Claim	Section 5.5(a)
Claim Notice	Section 5.5(a)
Claim Notice Recipient	Section 5.5(a)
Claimed Amount	Section 5.5(a)
Closing	Section 1.3
Closing Date	Section 1.3
Company	Preamble
Closing Statement	Section 1.7(b)
Company Assets	Section 2.7(a)
Company Board	Recitals
Company Common Stock	Recitals
Company Financial Statements	Section 2.4(a)
Company IP Form Contracts	Section 2.10(d)
Company Fundamental Reps	Section 5.1(a)
Company Leased Real Property	Section 2.9(b)
Company Material Contracts	Section 2.11(a)
Company-Owned IP	Section 2.10(e)(i)
Company Preferred Stock	Recitals
Company Series A Preferred Stock	Recitals
Company Series B Preferred Stock	Recitals
Company Series C Preferred Stock	Recitals
Company Stock Certificates	Section 1.11(c)
Company's Audited Financial Statements	Section 2.4(a)
Contest	Section 10.3(a)
Contested Amount	Section 5.5(b)

DGCL	Recitals
Difference	Section 1.7(e)
Disclosure Schedule	Article 2 Preamble
Dispute	Section 1.7(c)
Dispute Period	Section 5.5(b)
Disregarded Shares	Section 1.5(a)(i)
Dissenting Shares	Section 1.10(a)
Effective Time	Section 1.3
Employment Agreements	Recitals
Escrow Account	Section 6.1
Escrow Agent	Section 6.1
Expiration Date	Section 5.1(a)
Further Information Notice	Section 5.5(c)
Grant Date	Section 2.3(b)
Initial Distribution Date	Section 6.3(a)
Initial Distribution Date	Section 6.3(a)
Amount	
Key Employees	Section 7.6
Letter of Transmittal	Section 1.11(a)
Lockup Agreement	Recitals
Merger	Recitals
Merger Sub	Preamble
Merger Sub Common Stock	Section 3.7
Nomination Agreement	Recitals
Note	Section 1.6(d)
Objections Statement	Section 1.7(c)
Parent	Preamble
Parent Board	Recitals
Parent Balance Sheet	Section 3.11
Parent Cap	Section 5.3(c)
Parent Disclosure Schedule	Article 3 Preamble
Parent Incentive Plan	Section 3.6(a)
Parent Financial Statements	Section 3.5(c)
Parent Preferred Stock	Section 3.6(a)
Parent SEC Documents	Section 3.5(a)
Parent Series A Preferred Stock	Section 3.6(a)
Parent Series B Preferred Stock	Section 3.6(a)
Parent Warrants	Section 3.6(a)
PC	Section 5.8

Post-Closing Adjustment	Section 1.7(e)
Post-Initial Distribution Date	Section 6.3(b)
Post-Initial Distribution Date	Section 6.3(b)
Amount	
Premium Payments	Section 1.9(d)
Pre-Closing Statement	Section 1.7(a)(i)
Registration Rights Agreement	Recitals
Required Merger Stockholder	Section 2.22
Votes	
Response Notice	Section 5.5(b)
Seller Party	Preamble
Stockholders Agreement	Recitals
Stockholders' Agent	Section 11.1(a)
Stockholder Indemnitors	Section 5.2(a)
Surviving Corporation	Recitals
Tax Matter	Section 10.3(a)
Third Party Claims	Section 5.6
Unaudited Interim Balance	Section 2.4(a)
Sheet	
Unaudited Interim Balance Sheet	Section 2.4(a)
Date	

Exhibit A-1

Stockholders Party to this Agreement

ACCEL INVESTORS 2007 L.L.C.
ACCEL IX L.P.
ACCEL IX STRATEGIC PARTNERS L.P.
DAG Ventures GP Fund III, LLC
DAG Ventures III, L.P.
DAG Ventures III-A, LLC
DAG Ventures III-QP, L.P.
Frazier Technology Ventures II, L.P.
Trinity Ventures VIII, L.P.
Trinity VIII Entrepreneurs' Fund L.P.
Trinity VIII Side-by-Side Fund, L.P.

PROMISSORY NOTE

\$1,500,000.00

December 11, 2013

FOR VALUE RECEIVED, Viggle Inc., a Delaware corporation with an office at 902 Broadway, 11th Floor, New York, NY (the "Payor" or the "Company"), hereby unconditionally promises to pay to the order of Sillerman Investment Company II LLC, with an office at 430 Park Avenue, 6th Floor, New York, NY 10022 (the "Payee"), in lawful money of the United States of America in immediately available funds, the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), together with interest thereon compounded monthly from the date hereof through maturity at the rate of 9.00% per annum (calculated on the actual number of days elapsed and an assumed year of 360 days) (the "Stated Rate"). This principal amount, together with interest accrued thereon at the Stated Rate commencing on the date hereof, shall be due and payable in full on the earlier of: (a) January 10, 2014, or (b) the date on which the Company increases the principal amount of its Term Loan with Deutsche Bank Trust Company Americas in an amount allowing the Company to repay this Note, or such earlier date as this note may be declared due as a result of an Acceleration Event (such earliest date being herein the "Maturity Date").

This Promissory Note ("Note") evidences Payee's loan to Payor in the principal amount of this Note.

The principal and accrued interest balance of this Note may be prepaid in whole or in part at any time without a premium or penalty of any kind.

If any Acceleration Event (as defined below) shall occur for any reason then and in any such event, in addition to all rights and remedies of the Payee under this Note, applicable law or otherwise, all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively and concurrently, the Payee may, at its option, declare due any or all of the Payor's obligations, liabilities and indebtedness owing to the Payee under this Note whereupon the then unpaid balance hereof shall immediately be due and payable, together with all expenses of collection hereof, including, but not limited to, attorneys' fees and legal expenses (for this purpose, the Payor shall pay all trial and appellate attorneys' fees, costs and expenses, paid or incurred by the Payee in connection with collection of this Note). If the foregoing unpaid balances, expenses and collection costs are not paid upon demand upon the occurrence of an Acceleration Event (collectively, the "Unpaid Amounts"), such Unpaid Amounts shall bear interest until paid in full at the Stated Rate plus 5.00% per annum or the maximum interest rate then permitted under applicable law (whichever is less) (the "Default Rate"). From and after maturity of this Note, the Unpaid Amounts shall bear interest until paid in full at the Default Rate. For purposes hereof, "Acceleration Event" means the first to occur of the following: (i) if any principal or accrued interest or other amount owing under this Note is not paid when due and such default continues unremedied for fifteen (15) days after written notice provided by Payee to Payor, (ii) Payor having made an assignment for the benefit of creditors, filed a petition in bankruptcy, applied to or petitioned any tribunal for the appointment of a custodian, receiver, intervener or trustee for Payor, or commenced any proceeding for any arrangement or readjustment of its debts, (iii) any such petition or application having been filed or proceeding having commenced against Payor and Payor not having interposed a defense thereto within the time permitted under applicable law, (iv) the sale or other disposition of all or substantially all of Payor's assets, or (v) the dissolution of Payor. The Payor (i) waives diligence, demand, presentment, protest and notice of any kind, except for any notice expressly required by the provisions of this Note, and (ii) agrees that it will not be necessary for the Payee to first institute suit in order to enforce payment of this Note.

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The validity, interpretation and enforcement of this Note and any dispute arising in connection herewith or therewith shall be governed by the internal laws of the State of New York (without giving effect to principles of conflicts of law).

The Payor irrevocably consents and submits to the exclusive jurisdiction of the state courts of the State of New York located in the County of New York and the United States District Court whose district covers such county, and waives any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Note.

EACH OF PAYOR AND PAYEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS NOTE, AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY.

The Payor may not assign this Note and/or delegate any of its obligations hereunder without the written consent of the Payee. This Note is not secured by any collateral of any nature. Neither this Note nor all or any portion of the Payee's rights and interests herein may be negotiated, assigned, pledged, hypothecated or otherwise transferred by Payee.

The Payor shall be solely responsible for any necessary tax or assessment relating to this Note; provided, however, that the Payor shall not be responsible for Payee's tax obligations arising from receipt of funds set forth herein.

If any term or provision of this Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereof shall in no way be affected thereby.

The waiver by the Payee of the Payor's prompt and complete performance of, or default under, any provision of this Note shall not operate nor be construed as a waiver of any subsequent breach or default, and the failure by the Payee to exercise any right or remedy which it may possess hereunder or under applicable law shall not operate nor be construed as a bar to the exercise of any such right or remedy upon the occurrence of any subsequent breach or default.

IN WITNESS WHEREOF, the Payor has executed this Promissory Note the day and year first written above.

**Viggle Inc.,
a Delaware corporation**

By: /s/ John C. Small

John C. Small
Chief Financial Officer

SECOND AMENDMENT

TO

TERM LOAN AGREEMENT

SECOND AMENDMENT TO TERM LOAN AGREEMENT (this "Amendment"), dated as of December 13, 2013, by and between **VIGGLE INC.**, a Delaware corporation ("Borrower"), and **DEUTSCHE BANK TRUST COMPANY AMERICAS**, and its successors and assigns ("Lender").

RECITALS:

WHEREAS, Borrower and Lender have entered into that certain Term Loan Agreement, dated as of March 11, 2013 (as amended by that certain First Amendment to Term Loan Agreement dated as of September 10, 2013 and as otherwise amended, restated, modified and/or supplemented from time to time prior to the date hereof, the "Loan Agreement"; except as otherwise herein expressly provided, all capitalized terms used herein shall have the meanings assigned to such terms in the Loan Agreement), pursuant to which Lender provides Borrower with certain financial accommodations;

WHEREAS, Borrower has requested that Lender make certain amendments to the Loan Agreement including (a) increasing the Commitment Amount from \$10,000,000 to \$30,000,000, (b) extending the Maturity Date from December 16, 2013 to April 30, 2014 and (c) decreasing the interest rate margins as set forth herein; and

WHEREAS, Lender has agreed to such amendments on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Amendment to Loan Agreement. Subject to satisfaction of the conditions precedent set forth in Section 2 below, Borrower and Lender hereby agree to amend the Loan Agreement as follows:

(a) The following definition is hereby inserted in Section 1.1 of the Loan Agreement in its appropriate alphabetical order:

"Second Amendment Date" means December 13, 2013.

(b) The following definitions set forth in Section 1.1 of the Loan Agreement are hereby amended and restated in their entirety to provide as follows:

"Applicable Margin" means: (a) with respect to any Prime Rate Advance, 0.25% *per annum*; and (b) with respect to any LIBOR Advance, 2.50% *per annum*.

"Commitment Amount" means Thirty Million Dollars (\$30,000,000).

"Maturity Date" means the earlier to occur of (i) April 30, 2014 or (ii) the date upon which Lender declares the Obligations due and payable after the occurrence and during the continuance of an Event of Default.

(c) Section 2.11 of the Loan Agreement is hereby amended and restated in its entirety to provide as follows:

" 2 . 1 1 Use of Proceeds. The proceeds of the Loans made by Lender to Borrower (a) prior to the Second Amendment in the aggregate principal amount of \$10,000,000 were used by Borrower solely for working capital and other general corporate purposes and (b) on and after the Second Amendment Date in the aggregate principal amount of \$20,000,000 shall be used by Borrower solely as follows: (i) \$15,451,362.50 of such proceeds shall be used by Borrower on the Second Amendment Date to repay in full all of the Indebtedness due and owing by Borrower to Sillerman II and the Permitted Noteholders under the Sillerman II Note, (ii) \$1,500,375 of such proceeds shall be used by Borrower on the Second Amendment Date to repay in full that certain Promissory Note dated December 10, 2013 made by Borrower in favor of Sillerman II in the original principal amount of \$1,500,000 and (iii) \$3,048,262.50 of such proceeds shall be used by Borrower on and after the Second Amendment Date for working capital and other general corporate purposes. Lender shall have no liability, obligation, or responsibility whatsoever with respect to Borrower's use of the proceeds of the Loans."

(d) Section 7.1(b) of the Loan Agreement is hereby amended and restated in its entirety to provide as follows:

" (b) Failure to Perform Certain Acts. The failure to perform or observe any of the terms, covenants, conditions or provisions of (i) Sections 4.2, 4.3 4.4 and 4.6 and Article V hereof and (ii) Sections 10 and 12(h) of the Guaranty; or"

Section 2. Conditions Precedent. This effectiveness of this Amendment shall be subject to the satisfaction of the following conditions:

(a) the parties hereto have executed counterparts of this Amendment;

(b) Lender shall have received a legal opinion from the general counsel of Borrower, in form and substance satisfactory to Lender, covering such matters incident to the transactions contemplated by this Amendment;

(c) Lender shall have received a certificate of a Responsible Officer of Borrower satisfactory to it, evidencing (i) that this Amendment and the transactions contemplated herein, have been duly authorized and executed by all appropriate actions on the part of Borrower and (ii) the incumbency and signatures of the officers of Borrower and the organizational documents of Borrower, which may include confirmation that the organizational documents and other information certified in the Responsible Officer's certificate of Borrower delivered to Lender on the Closing Date remains unchanged and in full force and effect, except with respect to any changes as described therein;

(d) Lender shall have received a pay-off letter for the Sillerman II Note, in form and substance satisfactory to Lender, providing, among other things, that all Liens granted by Borrower in favor of Sillerman II and the Permitted Noteholders upon any of the assets of Borrower will be terminated and released concurrently with the payment in full of the Indebtedness evidenced by the Sillerman II Note; and

(e) Borrower shall have paid all fees and expenses, as such are due and payable under Section 6 hereof.

Section 3. References. At all times following the effectiveness of this Amendment, each reference (a) to "this Agreement" throughout the Loan Agreement, and (b) to "the Loan Agreement" throughout the other Loan Documents, shall be deemed amended to refer to the Loan Agreement as amended hereby, and as the same may be further modified, amended, consolidated, increased, renewed, supplemented and/or extended from time to time.

Section 4. Representations and Warranties. Borrower hereby represents and warrants to Lender as follows:

(a) Representations. Each of the representations and warranties of Borrower contained or incorporated in the Loan Agreement, as amended by this Amendment, or any other Loan Document to which Borrower is a party, is true and correct in all material respects on and as of the date hereof (except if any such representation or warranty is expressly stated to have been made as of a specific date, then as of such specific date).

(b) No Default. No Potential Default or Event of Default has occurred and is continuing.

(c) Power and Authority; Enforceability. Borrower has all necessary corporate power and authority to execute, deliver and perform its obligations under this Amendment; this Amendment has been duly authorized by all necessary corporate action on the part of Borrower; and this Amendment has been duly and validly executed and delivered by Borrower and constitutes Borrower's legal, valid and binding obligations, enforceable against Borrower in accordance with its terms, subject only to Debtor Relief Laws and

general principles of equity.

(d) No Counterclaims, etc. Borrower has no counterclaims, offsets, defenses or rights of recoupment of any kind against Lender, or any of its Affiliates, under the Loan Agreement or any other Loan Document to which Borrower is a party, or any other related instrument or evidence of indebtedness.

Section 5. Ratification. Except as modified herein, the provisions of the Loan Agreement and each of the other Loan Documents are reaffirmed, ratified and confirmed in their entirety by Borrower and shall remain unchanged and in full force and effect, and this Amendment shall not constitute a novation, extinguishment or substitution of the Obligations.

Section 6. Fees and Expenses. In accordance with Section 8.4 of the Loan Agreement, Borrower agrees to pay Lender all Attorney Costs incurred by Lender in connection with preparing, executing, delivering and administering this Amendment.

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Section 7. Miscellaneous.

(a) Governing Law: Submission to Jurisdiction This Amendment is governed by and shall be construed in accordance with the laws of the State of New York without giving effect to the conflicts of law principles thereof (other than Section 5-1401 of the New York General Obligations Law); Borrower further agrees to submit to the jurisdiction of New York State or federal courts as provided in the Loan Agreement.

(b) Agreements, Etc. The terms of this Amendment may be waived, modified and amended only by an instrument in writing duly executed by Borrower and Lender. Any such waiver, modification or amendment shall be binding upon Borrower and Lender and each of their respective successors and permitted assigns.

(c) Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the respective successors and permitted assigns of Borrower and Lender.

(d) Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Amendment.

(e) Counterparts. This Amendment may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart to this Amendment by facsimile or electronic PDF copy shall be as effective as delivery of a manually executed counterpart of this Amendment.

(f) Invalid Provisions. If any provision of this Amendment is held to be illegal, invalid or unenforceable under present or future laws, the remaining provisions of this Amendment shall remain in full force and effect and shall not be affected thereby, unless such continued effectiveness of this Amendment, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

[REMAINDER OF PAGE INTENTIONALLY BLANK.

SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the day and year first above written.

BORROWER:**VIGGLE INC.**

By: _____
Name
Title

LENDER:

**DEUTSCHE BANK TRUST COMPANY
AMERICAS**

By: /s/ _____
Name
Title

PATENT
REEL: 039237 FRAME: 0394

For Immediate Release:

VIGGLE ACQUIRES WETPAINT

Acquisition creates integrated network of TV fans across mobile, web and social media, including 12 million Wetpaint monthly unique users and more than 3.5 million Viggle registered users

NEW YORK – December 16, 2013 – Viggle (OTCQB: VGGL), the free mobile app that rewards entertainment loyalists for watching TV and listening to music, announced today that it has acquired **Wetpaint**, a leading entertainment media and technology company focused on television fans, for approximately \$30 million in cash and stock.

Wetpaint has become a leading destination for TV viewers, and provides original content to over 12 million monthly unique users. Wetpaint provides a way for fans to stay connected with the stars and programs they love 24 hours a day, 365 days a year.

In addition to its 12 million monthly unique users, Wetpaint boasts more than 90 million page views a month and combined social reach of over 7 million Facebook likes and followers on Twitter. It is a major source for deep, independent coverage of top TV shows, stars, entertainment news and fashion, producing premium content – more than 150 new articles, videos and galleries per day.

While Wetpaint will continue to offer its unique insight and access to its loyal fans, the two companies will begin to share content and benefits immediately. In the coming months Wetpaint users will gain access to Viggle's rewards program, and Viggles will see more and more unique and exclusive content focused on TV, TV stars, and fans of TV.

"Wetpaint is the perfect complement to our business for users, TV network partners and advertisers," said Greg Consiglio, President and COO of Viggle. "This combined company brings together Viggle's proven promotion, entertainment rewards and monetization capabilities with Wetpaint's reach, social distribution technologies and best-in-class content. Wetpaint leverages the power of social media to ensure TV fans are getting the latest news and commentary about the shows they love, and now we are expanding that to include real-time updates before, during and after the show airs."

Ben Elowitz, CEO of Wetpaint commented, "We are thrilled to join our loyal users with Viggle's avid fans, providing both with the continued opportunity to gain rewards by engaging in their passion – entertainment -- while also giving marketers a more integrated, dynamic platform."

For marketers, this acquisition creates significant opportunities to reach a passionate audience with targeted messages across an "always on" entertainment experience that now includes multiple touch points and platforms. Marketers already benefit from Viggle's extensive reward program, as well as in app advertising and that will now be extended through Wetpaint's online content and social media streams.

Viggle and Wetpaint provide unprecedented access to devoted TV viewers. With 316 million confirmed check-ins since launch last year, and an average of 66 minutes per session, Viggle's more than 3.5 million registered users already provide a unique and highly targeted way for brands and networks to amplify their message or content. Viggle can reward users for checking into programming on nearly 200 networks, and dozens of brands are actively using Viggle to complement their TV ads. Wetpaint's 90 million page views a month focused on the same content provides a way for brands and networks to access those viewers all day, every day.

Viggle and Wetpaint will share more details on the integration and the roll out of joint features, including music features, in the coming weeks.

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About Viggle

Launched in January 2012, Viggle is a free entertainment rewards platform whose app rewards its members for watching their favorite TV shows or discovering new music. Viggle enhances TV with interactive games like Viggle LIVE and the first ever real-time fantasy sports game, MYGUY. Viggle members get rewarded for their TV watching and music listening with real rewards, including electronics, trips, exclusive entertainment experiences, gift cards, and more. Viggle also allows like-minded fans of their favorite shows and artists to connect through Viggle social features. Viggle's audio verification technology recognizes shows on TV and allows members to check into live and DVR'd TV content from more than 180 of the most popular broadcast and cable channels. For more information, visit www.viggle.com or follow us on Twitter [@Viggle](https://twitter.com/Viggle).

About Wetpaint

Wetpaint is a company that is revolutionizing media with its expertise in social publishing. The company attracts more than 12 million monthly unique users to its *Wetpaint Entertainment* media property, which offers audiences their daily fix of entertainment and celebrity news. Founded by Internet pioneer Ben Elowitz, and with offices in New York and Seattle, Wetpaint is backed by Accel Partners, Trinity Ventures, Frazier Technology Ventures, and DAG Ventures.

This press release may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and as defined in the U.S. Private Securities Litigation Reform Act of 1995. These forward-looking statements involve inherent risks and uncertainties that could cause actual results to differ materially from those projected or anticipated. All information provided in this press release is as of December 16, 2013. Except as required by law, Viggle Inc. undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise, after the date on which the statements are made or to reflect the occurrence of unanticipated events.

Media Contact for Viggle:

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Viggle Investor Relations

John C. Small

CFO, Viggle Inc.

6467383220

**CERTIFICATE OF AMENDMENT
OF THE
AMENDED CERTIFICATE OF INCORPORATION
OF
VIGGLE INC.**

Under Section 242 of the Delaware General Corporation Law

It is hereby certified that:

1. The name of the corporation is Viggie Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation is hereby amended by deleting Article I thereof in its entirety and replacing it in its entirety with the following:

"The name of the corporation is DraftDay Fantasy Sports Inc. (the "Corporation")."

3. The amendment to the Certificate of Incorporation of the Corporation effected by this Certificate was duly authorized by the Board of Directors of the Corporation in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware, and by the affirmative vote of a majority of the Corporation's outstanding capital stock entitled to vote thereon by written consent in accordance with the provisions of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned duly authorized officer of the Corporation has executed this Certificate and affirmed that the statements made herein are true under penalties of perjury this 26th day of January, 2016.

VIGGLE INC.

By: _____

Name: _____

Title: _____

[Signature]

MITCHELL J. NELSON
Executive Vice President