PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT5777808

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	10/05/2018

CONVEYING PARTY DATA

Name	Execution Date
AXWAVE INC.	10/05/2018

RECEIVING PARTY DATA

Name:	FREE STREAM MEDIA CORP.
Street Address:	123 TOWNSEND STREET, 5TH FLOOR
City:	SAN FRANCISCO
State/Country:	CALIFORNIA
Postal Code:	94107

PROPERTY NUMBERS Total: 1

Property Type	Number
Application Number:	16657757

CORRESPONDENCE DATA

Fax Number: (619)235-0398

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

Phone: 619-238-1900
Email: docketing@procopio.com
Correspondent Name: PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
Address Line 1: 525 B STREET
Address Line 2: SUITE 2200
Address Line 4: SAN DIEGO, CALIFORNIA 92101

ATTORNEY DOCKET NUMBER:	127337-006CT2
NAME OF SUBMITTER:	GREG GERARDI
SIGNATURE:	/Greg Gerardi/
DATE SIGNED:	10/18/2019

Total Attachments: 61
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AGREEMENT AND PLAN OF MERGER

BY AND AMONG

FREE STREAM MEDIA CORP.,

ASTRO ACQUISITION CORP.,

AXWAVE, INC.,

AND

DAMIAN SCAVO, AS REPRESENTATIVE

OCTOBER 5, 2018

EXHIBITS AND SCHEDULES

Exhibit A-1	-	Form of Stockholder Investor Letter
Exhibit A-2	-	Form of Stockholder Joinder Letter
Exhibit B	-	Form of Noteholder Investor Letter
Exhibit C	-	Form of Certificate of Merger
Exhibit D	-	Form of IRS Notice
Exhibit E	-	Form of FIRPTA Notice
Exhibit F	-	Form of Employment Agreements
Exhibit G	-	Removed
Exhibit H	-	Form of Letter of Transmittal
Exhibit I	-	Removed
Exhibit J	-	Form of Samba Replacement Notes

Schedule 1.1	-	Certain Defined Terms
Schedule 1.1(a)	-	Key Employee List
Schedule 1.9(e)	-	Product and Revenue Milestone Matrix

Company Disclosure Schedules

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "***Agreement***") is made and entered into as of October 5, 2018 (the "***Agreement Date***"), by and among Free Stream Media Corp., a Delaware corporation ("***Acquirer***"), Astro Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Acquirer ("***Merger Sub***"), Axwave, Inc., a Delaware corporation (the "***Company***"), and Damian Scavo solely in his capacity as representative of the Indemnifying Investors (the "***Representative***").

RECITALS

A. The Board of Directors of each of the Company, Merger Sub and Acquirer have determined that it is advisable and in the best interests of their respective companies and the securityholders of their respective companies for Merger Sub to merge with and into the Company, on the terms and subject to the conditions set forth in this Agreement, in a statutory reverse-triangular merger (the "***Merger***"), with the Company surviving the Merger, and, in furtherance thereof, have approved the Merger, this Agreement and the other transactions contemplated by this Agreement.

B. Pursuant to the Merger, among other things, [redacted]

C. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquirer to enter into this Agreement, each of Damian Scavo, Maciej Donajski, Emanuele Mazzoni, Piotr Skwirzynski and Oleksandr Skalozubov (collectively, the "***Specified Service Providers***") are executing employment agreements or offer letters with Acquirer (each, an "***Employment Agreement***", and in the form of **Exhibit F**), in each case to be effective as of the Closing Date, and such Employment Agreement to include a non-competition agreement or provision with Acquirer to be effective as of the Closing and a waiver of any compensatory benefits which may be due as a result of this transaction.

D. Following the execution of this Agreement, and prior to the Closing Date, and as a material inducement to the willingness of Acquirer to consummate the Merger, each of the Company Stockholders is entering into a Stockholder Investment Letter, substantially in the form attached hereto as **Exhibit A-1** (a "***Stockholder Investment Letter***") or a Stockholder Joinder Letter, substantially in the form attached hereto as **Exhibit A-2** (a "***Stockholder Joinder Letter***" and collectively with any Stockholder Investment Letter, each a "***Stockholder Letter***").

E. Following the execution of this Agreement, and prior to the Closing Date, and as a material inducement to the willingness of Acquirer to consummate the Merger, each of the Noteholders is entering into a Noteholder Investment Letter, substantially in the form attached hereto as **Exhibit B** (a "***Noteholder Investment Letter***").

F. The Company, Merger Sub and Acquirer desire to make certain representations, warranties, covenants and other agreements in connection with the Merger as set forth herein.

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

ARTICLE I

THE MERGER

1.1 Certain Definitions. Certain capitalized terms used in this Agreement have the definitions set forth in the body of this Agreement. Any capitalized terms used in this Agreement and not defined in the body of this Agreement have the meanings assigned to such terms on Schedule 1.1.

1.2 The Merger. At the Effective Time (as such term is defined in Section 1.5), on the terms and subject to the conditions set forth in this Agreement, the Certificate of Merger in substantially the form attached hereto as **Exhibit C** (the "***Certificate of Merger***") and the applicable provisions of Delaware Law, Merger Sub shall merge with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation and shall become a wholly owned subsidiary of Acquirer. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

1.3 Closing. The closing of the transactions contemplated hereby (the "***Closing***") shall take place immediately following the execution of this Agreement and upon the Effective Time at the offices of Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California, or at such other time and location as the parties hereto agree. The date on which the Closing occurs is herein referred to as the "***Closing Date***." It shall be a condition to the Closing (a) all holders of Company Preferred Stock, (b) a majority of the voting power of the Company Common Stock voting together as a single class and (c) a majority of the voting power of the Company Common Stock and Company Preferred Stock voting together as a single class on an as-converted basis, shall have executed a written consent containing resolutions adopting the Agreement (the "***Company Stockholder Approval***").

1.4 Closing Deliveries.

(a) The Company shall deliver to Acquirer, at or prior to the Closing, each of the following:

(i) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Secretary, certifying the Company's (A) certificate of incorporation, (B) bylaws, (C) board resolutions approving the Merger and this Agreement, and (D) the Company Stockholder Approval;

(ii) resignations from each of the directors and each of the officers of the Company in office immediately prior to the Closing;

(iii) a certificate from the Secretary of State of the State of Delaware, the Secretary of State of the State of California and each other State or other jurisdiction in which the Company is qualified to do business as a foreign corporation, dated within three days prior to the Closing Date, and certifying that the Company is in good standing and, to the extent provided by such certificate, that all applicable state franchise or similar Taxes and fees of the Company through and including the date of the certificate have been paid;

(iv) FIRPTA documentation, including (A) a notice to the Internal Revenue Service, in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2), in substantially the form attached hereto as **Exhibit D**, dated as of the Closing Date and executed by the Company, together with written authorization for Acquirer to deliver such notice form to the Internal Revenue Service on behalf of the Company after the Closing, and (B) a FIRPTA Notification Letter, in substantially the form attached hereto as **Exhibit E**, dated as of the Closing Date and executed by the Company;

(v) to the extent not delivered to Acquirer at the signing of the Agreement, counterparts to the Employment Agreements, executed by each of the Specified Service Providers and other seven Employees;

(vi) to the extent not delivered to Acquirer at the signing of the Agreement, counterparts to the Non-Competition Agreements, executed by each of the Specified Service Providers;

(vii) [redacted]

(viii) counterparts to the Noteholder Investment Letter, executed by each Noteholder, and, for any recent Noteholder who is not receiving consideration in the transaction and not executing a Noteholder Investment Letter because such Noteholder has been paid off by the Company, payoff letters or other evidence satisfactory to the Acquirer that such obligation has been satisfied;

[redacted]

(x) the Spreadsheet, setting forth all of the information specified in Section 2.2(c), together with a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, certifying that such Spreadsheet is true, correct and complete;

(xi) evidence that the Deep Forecast Termination Agreement, in form acceptable to the Acquirer, has been approved by a majority of the disinterested directors of Deep Forecast;

[redacted]

(xiii) (I) a Parachute Payment Waiver ("***Parachute Payment Waiver***"), from each Person who the Company reasonably believes is, with respect to the Company, a "disqualified individual" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), as determined immediately prior to the initiation of the requisite stockholder approval procedure under, and who might otherwise have, receive or have the right or entitlement to receive a parachute payment under Section 280G of the Code, pursuant to which each such Person shall agree to waive any and all right or entitlement to any payments or benefits to the extent such payments or benefits may, separately or in the aggregate, constitute "parachute payments" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder) (the "***Parachute Payments***"), unless the requisite stockholder approval in accordance with Section 280G(b)(5)(B) of the Code and the regulations promulgated thereunder of such Parachute Payments ("***280G Stockholder Approval***") is obtained, and (II) evidence reasonably satisfactory to Acquirer that the Company has obtained 280G Stockholder Approval or, if such vote is not obtained, the Parachute Payment Waivers shall have remained in full force and effect.

1.5 Effective Time. At the Closing, Merger Sub and the Company shall cause the Certificate of Merger to be filed with the Secretary of State of the State of Delaware, in accordance with the relevant provisions of Delaware Law. The time of acceptance by the Secretary of State of the State of Delaware of

such filing (or such later time as may be agreed to by Acquirer and the Company in writing and set forth in the Certificate of Merger) is referred to herein as the "***Effective Time***".

1.6 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Company, and all debts, liabilities and duties of the Company and Merger Sub shall become debts, liabilities and duties of the Company.

1.7 Certificate of Incorporation and Bylaws. At the Effective Time, (a) the certificate of incorporation of the Company shall be amended in its entirety to read as set forth in the Certificate of Merger, until thereafter amended as provided by Delaware Law, and (b) the bylaws of the Company shall be amended in their entirety to read as the bylaws of Merger Sub, until thereafter amended as provided by Delaware Law, the certificate of incorporation of the Company and such bylaws.

1.8 Directors and Officers. At the Effective Time, (a) the members of the board of directors of Merger Sub immediately prior to the Effective Time shall be appointed as the members of the Company Board immediately after the Effective Time until their respective successors are duly elected or appointed and qualified, and (b) the officers of Merger Sub immediately prior to the Effective Time shall be appointed as the officers of the Company immediately after the Effective Time until their respective successors are duly appointed.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the disclosure schedule of the Company delivered to Acquirer concurrently with the parties' execution of this Agreement (the "***Company Disclosure Schedule***") (each of which disclosures (i) shall, in order to be effective as an exception to the representations and warranties contained in any Section of this Article II, (a) clearly indicate such Section and, if applicable, the Subsection of this Article II to which such disclosure relates or (b) upon a reading thereof without any independent knowledge of the subject matter thereof, reasonably apparently apply to such Section; and (ii) shall in any event also be deemed to be representations and warranties made by the Company to Acquirer under this Article II), the Company represents and warrants to Acquirer as follows (for purposes of these representations and warranties (other than those in Subsections 2.2 and 2.3), the term the "**Company**" shall include any subsidiaries of the Company, unless otherwise noted herein):

2.1 Organization, Good Standing, Corporate Power and Qualification. The Company is duly incorporated and organized, and is validly existing in good standing, under the laws of the State of Delaware. The Company has the requisite corporate power and authority to enter into and perform this Agreement and all other agreements required to be entered into and performed by the Company under this Agreement, to own and operate its properties and assets and to carry on its business as currently conducted and proposed to be conducted. The Company is duly qualified and is authorized to transact business and is in good standing as a foreign corporation in the State of California and in each jurisdiction in which the failure so to qualify would have a Material Adverse Effect on the Company.

2.2 [redacted]

(a) [redacted]

(b) [redacted]

(c) [redacted]

(i) [redacted]

(ii) [redacted]

(iii) [redacted]

(iv) [redacted]

(1) [redacted]

(2) [redacted]

(3) [redacted]

(4) [redacted]

(5) [redacted]

(6) [redacted]

(7) [redacted]

(8) [redacted]

(9) [redacted]

(10) [redacted]

(11) [redacted]

(12) [redacted]

(d) [redacted]

2.3 No Subsidiaries. The Company does not own or control, directly or indirectly, any interest in any other corporation, partnership, limited liability company, trust, joint venture, association, or other entity. Since its inception, the Company has not consolidated or merged with, acquired all or substantially all of the assets of, or acquired the stock of or any interest in any corporation, partnership, association, or other business entity.

2.4 Due Authorization. The Company has all requisite corporate power and authority to enter into the Transaction Agreements to which it is a party and to consummate the transactions contemplated thereby. The execution and delivery of the Transaction Agreements to which the Company is a party, and the consummation of the transactions contemplated thereby, have been duly authorized by the Company Board, and as required, approved by the Company Stockholders. This Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

2.5 Governmental Consents. Except for the filing of the Certificate of Merger, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity is required on the part of the Company in order to enable the Company to execute, deliver and perform its obligations under this Agreement, except for such qualifications or filings under applicable securities laws as may be required in connection with the transactions contemplated by this Agreement. All such qualifications and filings will, in the case of qualifications, be effective on the Closing and will, in the case of filings, be made within the time prescribed by law.

2.6 Litigation. There is currently no (and since the incorporation of the Company there has not been any) private or governmental action, suit, proceeding, claim, arbitration or investigation ("***Action***") pending or threatened against the Company or any of its directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company), before any court or Governmental Entity. The Company is not a party or to its knowledge subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or which the Company intends to initiate. To the Company's knowledge, there is no basis for any such Action that would, if determined adversely to the Company, result, individually or in the aggregate, in any material effect on the Company.

2.7 Restrictions on Business Activities. There is no Contract to which the Company is a party or judgment, injunction, order or decree binding upon the Company which has or would reasonably be expected to have, whether before or after consummation of the Merger, the effect of prohibiting or impairing any current or presently proposed business practice of the Company, any acquisition of property by the Company or the conduct of business by the Company.

2.8 Intellectual Property.

(a) As used in this Agreement, the following terms have the meanings indicated below:

(i) "***Intellectual Property Rights***" means any and all of the following and all rights in, arising out of, or associated therewith throughout the world: patents, and patent applications, inventions (whether or not patentable), discoveries, trade secrets, confidential or proprietary information and know how, trade names, logos, trademarks, Internet domain names and URLs, copyrights, works of authorship, computer programs, source code and executable code, compilers, application programming

interfaces, architectures, documentation, data, data structures, databases, technology, tools, techniques, methods, processes, formulae, patterns, algorithms and specifications, customer lists and supplier lists and any and all instantiations or embodiments of the foregoing in any form and embodied in any media.

(ii) "***Company Owned Intellectual Property***" means any and all Intellectual Property Rights that are owned or purportedly owned by the Company or that were developed for the Company by full or part time employees or consultants of the Company.

(iii) "***Company Intellectual Property***" means any and all Company Owned Intellectual Property and any and all Third Party Intellectual Property that is licensed to the Company.

(iv) "***Third Party Intellectual Property***" means any and all Intellectual Property Rights owned by a third party.

(v) "***Company Products***" means all products or services produced, marketed, licensed, sold, distributed or performed by or on behalf of the Company and all products or services currently under development by the Company.

(vi) "***Company Source Code***" means, collectively, any software source code or database specifications or designs, or any material proprietary information or algorithm contained in or relating to any software source code or database specifications or designs, of any Company-Owned Intellectual Property or Company Products.

(vii) "***Company Intellectual Property Agreements***" means any Contract governing any Company Intellectual Property to which Company is a party to or bound by, except for Contracts for Third Party Intellectual Property that is generally, commercially available software and (i) is not material to the Company; (ii) has not been modified or customized for the Company; and (iii) is licensed for an annual fee under $15,000.

(viii) "***Open Source Materials***" means software or other material that is distributed as "free software", "open source software" or under a similar licensing or distribution terms (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Standards License (SISL), Open Source Initiative, and the Apache License).

(ix) "***Personal Data***" means 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.

(b) Status. The Company has full title and ownership of, or is duly licensed under or otherwise authorized to use, all Intellectual Property Rights necessary to enable it to carry on its business, free and clear of any Encumbrances, and without any conflict with or infringement upon the rights of others. The Company Intellectual Property is sufficient for the conduct of the business as currently conducted and proposed to be conducted. The Company has not transferred ownership of, or agreed to transfer ownership of, any Intellectual Property Rights to any third party. No third party has any ownership right, title, interest, claim in or lien on any of the Company Owned Intellectual Property, and to the knowledge of the Company, there is no unauthorized use, unauthorized disclosure, infringement or misappropriation of any Company Owned Intellectual Property by any third party. The Company has taken all necessary steps to prosecute, maintain, and preserve its legal rights and ownership interests in all Company Owned Intellectual Property.

(c) Company Owned Intellectual Property. Section 2.8(c) of the Company Disclosure Schedule lists: (i) all Company Owned Intellectual Property, including all patents and patent applications, and registrations and applications for trademarks, copyrights, and domain names and the jurisdictions in which it has been issued or registered or in which any application for such issuance and registration has been filed, or in which any other filing or recordation has been made; and (ii) all actions that are required to be taken by the Company within 120 days of the Closing Date with respect to such Intellectual Property Rights in order to avoid prejudice to, impairment or abandonment of such Intellectual Property Rights.

(d) Founders. All rights in, to and under all Intellectual Property Rights created by the Company's founders for or on behalf or in contemplation of the Company (i) prior to the inception of the Company or (ii) prior to their commencement of employment with the Company have been duly and validly assigned to the Company, and the Company has no reason to believe that any such Person is unwilling to provide the Company, the Surviving Corporation or Acquirer with such cooperation as may reasonably be required to complete and prosecute all appropriate U.S. and foreign patent and copyright filings related thereto.

(e) No Governmental Assistance. At no time during the conception or reduction to practice of any of the Company Owned Intellectual Property was any developer, inventor or other contributor to such Company Owned Intellectual Property (i) operating under any grants from any Governmental Entity or agency or private source, (ii) performing research sponsored by any Governmental Entity or agency or private source or (iii) subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third party that could adversely affect the Company's rights in such Company Owned Intellectual Property.

(f) Invention Assignment and Confidentiality Agreement. The Company has secured from all consultants, advisors, employees and independent contractors who independently or jointly contributed to or participated in the conception, reduction to practice, creation or development of any Company Owned Intellectual Property for or on behalf of the Company (each an "***Author***"), unencumbered and unrestricted exclusive ownership of, all of the Authors' Intellectual Property Rights in such contribution that the Company does not already own by operation of law and has obtained waivers of all non-assignable rights. No Author has retained any rights, licenses, claims or interest whatsoever with respect to any Company Owned Intellectual Property Rights developed by the Author for the Company. Without limiting the foregoing, the Company has obtained written and enforceable proprietary information and invention disclosure and Intellectual Property Rights assignments from all current and former Authors. The Company has provided to Acquirer copies of all such forms currently and historically used by the Company.

(g) No Violation. No current or former employee, consultant, advisor or independent contractor of the Company: (i) is in violation of any term or covenant of any Contract relating to employment, invention disclosure, invention assignment, non-disclosure or non-competition or any other Contract with any other party by virtue of such employee's, consultant's, advisor's or independent contractor's being employed by, or performing services for, the Company or using trade secrets or proprietary information of others without permission; or (ii) has developed any technology, software or other copyrightable, patentable or otherwise proprietary work for the Company that is subject to any agreement under which such employee, consultant, advisor or independent contractor has assigned or otherwise granted to any third party any rights (including Intellectual Property Rights) in or to such technology, software or other copyrightable, patentable or otherwise proprietary work.

(h) Confidential Information. The Company has taken all commercially reasonable steps to protect and preserve the confidentiality of all confidential or non-public information of the Company or provided by any third party to the Company ("***Confidential Information***"). All current and former employees and contractors of the Company and any other third party having access to Confidential

Information have executed and delivered to the Company a written legally binding agreement regarding the protection of such Confidential Information. The Company has implemented and maintains reasonable information security plans and procedures consistent with industry practices of companies offering similar services. To the Company's knowledge, the Company has not experienced any breach of security or otherwise unauthorized access by third parties to the Confidential Information, including Personal Data in the Company's possession, custody or control.

(i) Non-Infringement. The operation of the business of the Company as it is currently conducted and as it has been conducted has not infringed or misappropriated, and does not infringe or misappropriate, the Intellectual Property Rights of any third party. The Company is not and has not been subject to any Action and has not received any written communications alleging that the Company has violated or, by operating its business as presently conducted and proposed to be conducted, would violate any of the patents, trademarks, service marks, trade names, copyrights, trade secrets, or other proprietary rights or processes of any other Person or entity. No Company Owned Intellectual Property or Company Product is subject to any proceeding, order, judgment, settlement agreement, stipulation or right that restricts in any manner the use, transfer, or licensing thereof by the Company, or which may affect the validity, use or enforceability of any such Company Owned Intellectual Property. To the knowledge of the Company, there is no unauthorized use, unauthorized disclosure, infringement or misappropriation of any Company Owned Intellectual Property, by any third party. The Company has not brought any action, suit or proceeding for infringement or misappropriation of any Intellectual Property Right by any third party.

(j) Licenses; Agreements. The Company has not granted any options, licenses or agreements of any kind relating to any Company Owned Intellectual Property, other than nonexclusive licenses and/or end user terms of service entered into by the Company's customers in the ordinary course of business, nor is the Company bound by or a party to any option, license or agreement of any kind with respect to any of the Company Owned Intellectual Property. The Company is not obligated to pay any royalties or other payments to third parties with respect to the marketing, sale, distribution, manufacture, license or use of any Company Owned Intellectual Property or any other property or rights. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the operation of the Company's business as currently conducted and proposed to be conducted, will conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant, or instrument under which any of such employees is now obligated.

(k) Other Intellectual Property Agreements. With respect to the Company Intellectual Property Agreements:

(i) The Company is not (and will not be as a result of the execution and delivery or effectiveness of this Agreement or the performance of the Company's obligations under this Agreement), in breach of any Company Intellectual Property Agreement and the consummation of the transactions contemplated by this Agreement will not result in the modification, cancellation, termination, suspension of, or acceleration of any payments with respect to any material Company Intellectual Property Agreements, or give any non-Company party to any Company Intellectual Property Agreement the right to do any of the foregoing;

(ii) At the Closing, the Surviving Corporation will be permitted to exercise all of the Company's rights under the Company Intellectual Property Agreements to the same extent the Company would have been able to had the transactions contemplated by this Agreement not occurred and without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company would otherwise be required to pay;

(iii) To the Company's knowledge, there are no disputes regarding the scope of any Company Intellectual Property Agreements, or performance under any Company Intellectual Property Agreements including with respect to any payments to be made or received by the Company thereunder;

(iv) No Company Intellectual Property Agreement requires the Company to include any Third Party Intellectual Property in any Company Product or obtain any Person's approval of any Company Product at any stage of development, licensing, distribution or sale of that Company Product;

(v) None of the Company Intellectual Property Agreements grants any third party exclusive rights to or under any Company Intellectual Property;

(vi) None of the Company Intellectual Property Agreements grants any third party the right to sublicense any Company Intellectual Property;

(vii) The Company has obtained valid, written, perpetual, non-terminable (other than for cause) licenses (sufficient for the conduct of the Business) to all Third Party Intellectual Property that is incorporated into, integrated or bundled by the Company with any of the Company Products;

(viii) No third party that has licensed Intellectual Property Rights to the Company has ownership or license rights to improvements or derivative works made by the Company in the Third Party Intellectual Property that has been licensed to the Company.

(l) No Conflict. Neither this Agreement, the transactions contemplated by this Agreement, or the assignment to Acquirer and/or the Surviving Corporation by operation of law or otherwise of any Contracts to which the Company is a party, will result in: (i) Acquirer or any of its Affiliates granting to any third party any right to or with respect to any Intellectual Property Rights owned by, or licensed to Acquirer or any of its Affiliates, (ii) Acquirer or any of its Affiliates, being bound by or subject to, any exclusivity obligations, non-compete or other restriction on the operation or scope of their respective businesses, or (iii) Acquirer or the Surviving Corporation being obligated to pay any royalties or other amounts to any third party in excess of those payable by any of them, respectively, in the absence of this Agreement or the transactions contemplated hereby.

(m) Source Code. The Company has not disclosed, delivered or licensed to any Person or agreed or obligated itself to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any Company Source Code, other than disclosures to employees and consultants involved in the development of Company Products. 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, result in the disclosure, delivery or license by the Company of any Company Source Code, other than disclosures to employees and consultants involved in the development of Company Products. Without limiting the foregoing, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will result in a release from escrow or other delivery to a third party of any Company Source Code.

(n) Open Source Software. Section 2.8(n) of the Company Disclosure Schedule lists all Open Source Materials used by the Company in any way, and describes the manner in which such Open Source Materials were used (including whether and how the Open Source Materials were modified and/or distributed by the Company). The Company is in compliance with the terms and conditions of all licenses for Open Source Materials. The Company has not (i) incorporated Open Source Materials into, or combined Open Source Materials with, the Company Owned Intellectual Property or Company Products; (ii)

distributed Open Source Materials in conjunction with any Company Owned Intellectual Property or Company Products; or (iii) used Open Source Materials, in such a way that, with respect to (i), (ii), or (iii), creates, or purports to create obligations for the Company with respect to any Company Owned Intellectual Property or grant, or purport to grant, to any third party, any rights or immunities under any Company Owned Intellectual Property (including using any Open Source Materials that require, as a condition of use, modification and/or distribution of such Open Source Materials that other software incorporated into, derived from or distributed with such Open Source Materials be (A) disclosed or distributed in source code form, (B) be licensed for the purpose of making derivative works, or (C) be redistributable at no charge).

(o) Privacy. The Company has: (i) complied in all material respects with its published privacy policies and internal privacy policies and guidelines (complete and accurate copies of which have been provided to Acquirer), and all applicable Legal Requirements relating to data privacy; and (ii) taken commercially reasonable measures to ensure that Personal Data is protected against loss, damage, and unauthorized access, use, modification, or other misuse. To the Company's Knowledge, there has been no loss, damage, or unauthorized access, use, modification, or other misuse of any Personal Data by the Company or, to the Company's Knowledge, any of the Company's respective employees or contractors. No Person has provided any written or, to the Company's Knowledge, other notice or claim, or commenced any Action with respect to, any loss, damage, or unauthorized access, use, modification, or other misuse of any such Personal Data by the Company or any of its employees or contractors.

(p) Personal Data. Section 2.8(p) of the Company Disclosure Schedule identifies and describes each distinct electronic or other database containing (in whole or in part) Personal Data maintained by or for Company at any time ("***Company Databases***"), the types of Personal Data in each such database, the means by which the Personal Data was collected, and the security policies that have been adopted and maintained with respect to each such database. No breach or violation of any such security policy by Company has occurred or, to the knowledge of the Company, is threatened, and to the knowledge of the Company, there has been no unauthorized or illegal use of or access to any of the data or information in any of the Company Databases.

2.9 Compliance with Law and Documents; Permits. The Company is not, and since the date of its incorporation it has not been, in violation or default of any provisions of its certificate of incorporation of bylaws, both as amended to date, or of any provision of any Contract to which it is a party or by which it is bound. The Company is, and since the date of its incorporation has been, in compliance in all material respects with all applicable Legal Requirements. The Company has all material franchises, permits, licenses and any similar authority necessary for the conduct of its business as now being conducted and as proposed to be conducted. The Company has not received any written notice of any violation of any such statute, law, regulation or order. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby or thereby will not result (i) in any violation or default, or be in conflict with or result in a violation or breach of, with or without the passage of time or the giving of notice or both, under (A) the Company's certificate of incorporation or bylaws, as amended, (B) any judgment, order or decree of any court or arbitrator to which the Company is a party or is subject, or (C) any material Contract to which the Company is a party; (ii) a violation of any statute, law, regulation or order, or an event which results in the creation of Encumbrance upon any asset of the Company; or (iii) the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization, or approval applicable to the Company, its business or operations, or any of its assets or properties.

2.10 Title to Property and Assets. The Company owns its properties and assets free and clear of all Encumbrances, except for statutory liens for the payment of current taxes that are not yet delinquent and liens, encumbrances and security interests which arise in the ordinary course of business, and Encumbrances which do not affect the use or ownership of properties and assets of the Company in any

material respect. With respect to the property and assets it leases, the Company is in material compliance with all such leases. The Company does not own any real property. The assets and properties of the Company constitute all of the assets and properties that are necessary for the Company to operate its business as conducted and currently proposed to be conducted.

2.11 [redacted]

[redacted]

(b) [redacted]

(c) [redacted]

2.12 Absence of Changes. Since January 1, 2018:

(a) the Company has not declared or paid any dividends, or authorized or made any distribution upon or with respect to any Company Common Stock;

(b) the Company has not incurred any indebtedness for money borrowed or incurred any other liabilities individually in excess of $10,000 or in excess of $25,000 in the aggregate;

(c) the Company has not made any loans, guarantees or advances to any Person, other than ordinary advances for expenses;

(d) the Company has not sold, exchanged or otherwise disposed of any material assets or rights other than non-exclusive licenses to Company customers in the ordinary course of its business;

(e) the Company has not entered into any transactions with any of its officers, directors or employees or any entity controlled by any of such individuals;

[redacted]

(g) there has not been any waiver by the Company of a valuable right or of a material debt owed to it;

(h) there has not been any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject, except for changes or amendments which are expressly provided for in this Agreement;

(i) there has not been any change in any compensation or benefits arrangement or agreement with any employee, officer, director or stockholder of the Company;

(j) there has not been any resignation or termination of employment of any officer or key employee of the Company and the Company has no knowledge of any impending resignation or termination of employment of any such officer or key employee;

(k) there has not been any change in any tax election or method of tax accounting, or any settlement or final determination of any tax audit, claim, investigation, litigation or other proceeding or assessment;

(l) there has not occurred any event or events that have had, or could reasonably be expected to have, a Material Adverse Effect on the Company; and

(m) there has not been any arrangement or commitment by the Company or any other Person acting on its behalf to do any of the things described in this Section 2.12.

2.13 No Finder's Fees; Transaction Expenses. Except as set forth in Section 2.13 of the Company Disclosure Schedule, the Company neither is nor will be obligated for any finder's or broker's fee or commission or other Transaction Expense in connection with the transactions contemplated by this Agreement.

2.14 Insurance. Section 2.14 of the Company Disclosure Schedule lists all insurance policies (by policy number, insurer, location of property insured, annual premium, expiration date, and amount and scope of coverage) held by Company, copies of which have been provided to Acquirer. There is no claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been timely paid and the Company is otherwise in compliance with the terms of such policies and bonds. All such policies and bonds remain in full force and effect, and the Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

2.15 Tax Returns and Payments.

(a) The Company has timely filed all Tax Returns required by law. All Tax Returns are true and complete in all material respects. The Company has paid all Taxes and other assessments due except to the extent reflected on the Company Financial Statements as an accrual or reserve for Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income). The Company has no liability for any Tax to be imposed upon it as the Closing Date that is not reflected in such accruals or reserves. The Company has withheld or collected from each payment made to each of its employees, stockholders or third parties the amount of all Taxes required to be withheld or

collected therefrom, including but not limited to, federal income taxes, federal excise taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes, and has paid the same to the proper taxing authority or authorized depositories. Amounts accruing for the current period for such withholdings are similar to the amounts that accrued for such withholdings in past periods.

(b) There is no agreement, plan, arrangement or other Contract covering any current or former employee or other service provider of the Company or to which the Company is a party or by which the Company is bound that, considered individually or considered collectively with any other such agreements, plans, arrangements or other Contracts, will, or could reasonably be expected to, as a result of the transactions contemplated hereby (whether alone or upon the occurrence of any additional or subsequent events), give rise directly or indirectly to the payment of any amount that could reasonably be expected to be non-deductible under Section 162 of the Code (or any corresponding or similar provision of state, local or foreign Tax law) or characterized as a "parachute payment" within the meaning of Section 280G of the Code (or any corresponding or similar provision of state, local or foreign Tax law). Section 2.15(b) of the Company Disclosure Schedule lists each Person who the Company reasonably believes is, with respect to the Company, a "disqualified individual" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), as determined as of the Agreement Date.

(c) Section 2.15(c) to the Company Disclosure Schedule lists all "nonqualified deferred compensation plans" (within the meaning of Section 409A of the Code) to which the Company is a party. Each such nonqualified deferred compensation plan to which the Company is a party has been operated in good faith compliance with the requirements of paragraphs (2), (3) and (4) of Section 409A(a). No event has occurred that would be treated by Section 409A(b) as a transfer of property for purposes of Section 83 of the Code.

(d) Neither the Company nor Acquirer has incurred or will incur any liability or obligation to withhold or report taxes under Section 409A of the Code with respect to any options to purchase Company Capital Stock or any amounts deemed to be compensation subject to Section 409A of the Code.

(e) There is no claim for Taxes that has resulted in an Encumbrance against any of the assets of the Company other than a statutory lien for Taxes that are not yet due and payable.

(f) The Company has made available to Acquirer true, correct and complete copies of all Tax Returns, examination reports and statements of deficiencies, adjustments and proposed deficiencies and adjustments with respect to Taxes in respect of the Company.

(g) There is no (i) no past or pending audit of, or Tax controversy associated with, any Tax Return of the Company that has been or is being conducted by a Tax Authority, (ii) no other procedure, proceeding or contest of any refund or deficiency in respect of Taxes pending or on appeal with any Governmental Entity, (iii) no extension of any statute of limitations on the assessment of any Taxes granted by the Company currently in effect and (iv) no agreement to any extension of time for filing any Tax Return of the Company that has not yet been filed. No claim has ever been made to the Company by any Governmental Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction.

(h) No person treated as an independent contractor by the Company for Tax purposes was or will be considered as an employee of the Company by an applicable Tax Authority.

(i) The Company is in compliance with all applicable transfer pricing laws and regulations, including the execution and maintenance of contemporaneous documentation substantiating

the transfer pricing practices and methodology of the Company. The prices for any property or services (or for the use of any property) provided by or to the Company or any subsidiary are arm's length prices for purposes of all applicable transfer pricing laws, including Treasury Regulations promulgated under Section 482 of the Code.

(j) The Company is not subject to, and has not paid any, Tax in any jurisdiction (foreign or domestic) other than its country and state of organization or formation or by virtue of having employees, a permanent establishment or any other place of business in any jurisdiction.

(k) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) beginning after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax law) executed on or prior to the Closing Date; (iii) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax law) with respect to a transaction occurring on or prior to the Closing Date; (iv) any use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (v) installment sale or open transaction disposition made on or prior to the Closing Date; (vi) prepaid amount received or revenue deferred on or prior to the Closing Date; (vii) election under Section 108(i) of the Code made on or prior to the Closing Date; or (viii) an election under Section 965(h) or Section 965(n) of the Code (or any similar provision of law).

2.16 List of Material Agreements.

(a) Section 2.16(a) of the Company Disclosure Schedule contains a complete list of all Contracts to which the Company is a party or is bound that involve:

(i) transactions between the Company and any its officers, directors, employees, affiliates, or any affiliate thereof, other than standard employee benefits made available to all employees;

(ii) obligations (contingent or otherwise) of, or payments to, the Company in excess of $5,000 per annum;

(iii) the license of any Intellectual Property Right (A) to or (B) from the Company (other than off-the-shelf software that is commercially available for less than $5,000 and is not included in any the Company Products or services);

(iv) the grant of rights to reproduce, license, market, or sell its products or services to any other Person or relating to the advertising or promotion of the business of the Company or pursuant to which any third parties advertise on any websites operated by the Company;

(v) indemnification obligations of the Company to any officer, director, employee or agent of the Company;

(vi) any merger, acquisition, consolidation, sale or other business combination or divestiture transaction of the Company;

(vii) any agreement pursuant to which any other party is granted exclusive rights or "most favored party" rights of any type or scope with respect to any of its products, technology,

intellectual property or business, or containing any non-competition covenants or other restrictions relating to the Company's business activities; or limits the freedom of the Company to engage or participate, or compete with any other Person, in any line of business, market or geographic area, or to make use of any Company Owned Intellectual Property Rights, or

(viii) any Contract providing for the development of any software, technology or Intellectual Property Rights, independently or jointly, (A) by or (B) for the Company (other than employee invention assignment agreements and consulting agreements with Authors on the Company's standard form of agreement, copies of which have been provided to Acquirer's counsel);

(ix) all licenses, sublicenses and other Contracts relating to the hosting of any Company website;

(x) any real property lease or sublease;

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

(xii) any Contracts relating to the membership of, or participation by, the Company in, or the affiliation of the Company with, any industry standards group or association;

(xiii) any settlement agreement;

(xiv) any Contract pursuant to which rights of any third party are triggered or become exercisable, or under which any other consequence, result or effect arises, in connection with or as a result of the execution of this Agreement or the consummation of the Merger or other transactions contemplated hereunder, either alone or in combination with any other event and with or without notice;

(xv) any confidentiality, secrecy or non-disclosure Contract, excluding any such Contract entered into by the Company in the ordinary course of business (but including any such Contract containing terms described in Section 2.16(a)(i)-(xiv));

(xvi) any employment of any director, officer, employee or consultant of the Company or any other agreement with any officer, employee or consultant of the Company that is not immediately terminable by the Company without cost or Liability; and

(xvii) any other transaction material to the Company's business, properties, financial condition or results of operations (collectively, the "***Company Material Agreements***").

(b) No Breach. The Company is not in breach of and has not breached, nor does the Company have any knowledge of any claim or threat that the Company has breached, any term or condition of (i) any Company Material Agreement, or (ii) any other agreement, contract, lease, license, instrument or commitment, in the case of clause (ii) that would, individually or in the aggregate, have a Material Adverse Effect on the Company. Each Company Material Agreement is in full force and effect and, to the Company's knowledge, no other party to such Company Material Agreement is in default thereunder.

2.17 Certificate; Bylaws; Minute Books; Books and Records. The Company's certificate of incorporation and bylaws are in the form previously provided to Acquirer. The minute books of the Company made available to Acquirer contain a complete summary of all meetings and complete and true copies of all consents of the Company's directors and stockholders. The books and records of the Company, as made available to Acquirer: (a) are in all material respects true, complete and correct, (b) have been

maintained in accordance with the Company's business practices on a basis consistent with prior years, (c) are stated in reasonable detail and fairly reflect in all material respects the transactions and dispositions of the assets of the Company, and (d) fairly reflect in all material respects the basis for the Company Financial Statements.

2.18 Employee Matters.

(a) Section 2.18(a) of the Company Disclosure Schedule lists, with respect to the Company, (i) all "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"), (ii) each outstanding loan to an employee, (iii) all stock option, stock purchase, phantom stock, and stock appreciation right plans, programs or arrangements, (iv) sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Section 125 of the Code), dependent care (Section 129 of the Code), life insurance or accident insurance plans, programs or arrangements, (v) all bonus, commission, pension, profit sharing, savings, severance, retirement, deferred compensation or incentive plans, programs or arrangements, and (vi) all employment or executive compensation or severance agreements, written or otherwise, as to which unsatisfied obligations of the Company remain for the benefit of, or relating to, any present or former employee, consultant, advisor or non-employee director of the Company (all of the foregoing described in clauses (i) through (vi), collectively, the "***Company Employee Plans***").

(b) Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service a favorable determination letter as to its qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation, or has applied (or has time remaining in which to apply) to the Internal Revenue Service for such a determination letter prior to the expiration of the requisite period under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination or has been established under a standardized prototype plan for which an Internal Revenue Service opinion letter has been obtained by the plan sponsor and is valid as to the adopting employer. The Company does not sponsor or maintain any self-funded employee benefit plan, including any plan to which a stop-loss policy applies.

(c) None of the Company Employee Plans promises or provides retiree medical or other retiree welfare benefits to any person other than as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("***COBRA***") or similar state law. No Company Employee Plan is covered by, and the Company has not incurred nor expects to incur any liability under Title IV of ERISA or Section 412 of the Code. Each Company Employee Plan, other than a Company Employee Plan described in Subsection (a)(ii) or (vi) above, can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability to Acquirer, the Surviving Corporation (other than ordinary administrative expenses typically incurred in a termination event).

(d) The Company does not currently maintain, sponsor, participate in or contribute to, nor has ever maintained, established, sponsored, participated in, or contributed to, any pension plan (within the meaning of Section 3(2) of ERISA) which is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code.

(e) The Company is not a party to, nor has made any contribution to or otherwise incurred any obligation under, any "multiemployer plan" as such term is defined in Section 3(37) of ERISA or any "multiple employer plan" as such term is defined in Section 413(c) of the Code.

(f) The Company has no liability and is not a party to or bound by any currently effective employment contract, deferred compensation arrangement, bonus plan, commission plan,

incentive plan, profit sharing plan, retirement agreement or other employee compensation plan or agreement. To the Company's knowledge, no employee of the Company, nor any consultant or advisor with whom the Company has contracted, is in violation of any term of any employment contract, proprietary information agreement or any other agreement relating to the right of any such individual to be employed by, or to contract with, the Company; and to the Company's knowledge the continued employment by the Company of its present employees, and the performance of the Company's contracts with its independent contractors, will not result in any such violation. The Company has not received any notice alleging that any such violation has occurred.

(g) Other than as expressly contemplated by this Agreement, none of the execution and delivery of this Agreement, the consummation of the Merger or any other transaction contemplated hereby or any termination of employment or service or any other event in connection therewith or subsequent thereto will, individually or together or with the occurrence of another event, (i) result in any payment (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any Person, (ii) materially increase or otherwise enhance any benefits otherwise payable by the Company, (iii) result in the acceleration of the time of payment or vesting of any such benefits, except as required under Section 411(d)(3) of the Code, (iv) increase the amount of compensation due to any Person, or (v) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any Person.

(h) The Company is in compliance in all respects with all currently applicable Legal Requirements respecting employment, discrimination in employment, terms and conditions of employment, worker classification (including the proper classification of workers as independent contractors, consultants and advisors), wages, hours and occupational safety and health and employment practices, including the Immigration Reform and Control Act, and is not engaged in any unfair labor practice.

(i) The Company is not a party to or bound by any collective bargaining agreement or other labor union Contract, no collective bargaining agreement is being negotiated by the Company and the Company does not have any duty to bargain with any labor organization. There is no pending demand for recognition or any other request or demand from a labor organization for representative status with respect to any Person employed by the Company. The Company does not have knowledge of any activities or proceedings of any labor union or to organize their respective employees. There is no labor dispute, strike or work stoppage against the Company pending or, to the knowledge of the Company, threatened which may interfere with the respective business activities of the Company.

(j) The employment of the employees of the Company is "at will" and the Company does not have any obligation to provide any particular form or period of notice prior to terminating the employment of any of their respective employees, except as set forth on Section 2.18(j) of the Company Disclosure Schedule. Unless required by Acquirer, the Company does not have a present intention to terminate the employment of any officer, key employee or group of employees.

(k) The Company has provided to Acquirer a true, correct and complete list of the names, positions and rates of compensation of all current officers, directors, and employees of the Company, showing each such person's name, position, base annual remuneration, status as exempt/non-exempt, visa status, bonuses and fringe benefits for the current fiscal year and the most recently completed fiscal year.

(l) The Company has provided to Acquirer a true, correct and complete list of all of its consultants, advisors and independent contractors and for each the initial date of the engagement and whether the engagement has been terminated by written notice by either party.

(m) The Company has provided to Acquirer true, correct and complete copies of each of the following: all forms of offer letters; all forms of employment agreements and severance agreements; all forms of services agreements and agreements with current and former consultants and/or advisors; all forms of confidentiality, non-competition or inventions agreements between current and former employees/consultants and the Company (and a true, correct and complete list of employees, consultants and/or others not subject thereto); the most current management organization chart(s); all agreements and/or insurance binders, providing for the indemnification of any officers or directors of the Company; summary of current liability for termination payments to current and former directors, officers and employees of the Company; and a schedule of bonus commitments made to employees of the Company. The Company has delivered to Acquirer true and complete copies of all election statements under Section 83(b) of the Code that are in the Company's possession with respect to any unvested securities or other property issued by the Company to any of its employees, non-employee directors, consultants and other service providers.

(n) The Company has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of the Worker Adjustment Retraining Notification Act of 1988, as amended, or any similar state or local law or any similar Legal Requirement.

(o) Each employee benefit plan complies, in both form and operation, in all respects, with its terms, ERISA, if applicable and the Code, if applicable, and no condition exists or event has occurred with respect to any such plan which would result in the incurrence by the Company or Acquirer of any Liability, fine or penalty.

2.19 Customers. The Company has made available to Acquirer a list of all customers of the Company. No such customer has (a) canceled or otherwise terminated its relationship with the Company or (b) materially decreased its usage of the Company's products and services since the Balance Sheet Date. To the knowledge of the Company, as of the date of this Agreement no Material Customer intends to cancel or otherwise terminate its relationship with the Company or to materially decrease its usage of the Company's products and services.

2.20 Anti-corruption. Neither the Company nor, to the Company's Knowledge, any of its respective current or former officers, directors, employees, agents or representatives has, directly or indirectly, for or on behalf of the Company: (a) engaged in any fraud or other scheme to deceive any customer or vendor of the Company or any other Person with whom the Company does business; or (b) made any bribe, kickback or other unrecorded payment to any Person seeking to influence any action or inaction by such Person, or to obtain favorable treatment in securing business or other special concessions from such Person or the business or Governmental Entity that such Person represents or that employs such Person, or to obtain any illegal payments or other consideration from such Person or the business or government that such Person represents or that employs such Person, in violation of the Foreign Corrupt Practices Act of 1977, as amended ("***FCPA***"). Without limiting the generality of the foregoing, the Company has not directly or indirectly made or agreed to make (whether or not such payment is lawful) any payment to obtain, or with respect to, sales other than usual and regular compensation to its employees and sales representatives with respect to such sales. The Company is in material compliance with, and has since its incorporation complied in all material respects with, the applicable provisions of the FCPA and regulations promulgated thereunder relating to corrupt practices.

2.21 Environmental and Safety Laws. The Company is not, and has not ever been, in violation of any applicable statute, law or regulation relating to the environment or occupational health and safety.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF ACQUIRER

Acquirer represents and warrants to the Company as follows:

[redacted]

3.2 [redacted]

(a) [redacted]

[redacted]

3.3 Due Authorization. Acquirer and Merger Sub each has all requisite corporate power and authority to enter into the Transaction Agreements and to consummate the transactions contemplated thereby. The execution and delivery of the Transaction Agreements, and the consummation of the transactions contemplated thereby, have been duly authorized by Acquirer's and Merger Sub's respective board of directors, and as required, approved by the stockholders of Acquirer. This Agreement has been duly executed and delivered by Acquirer and Merger Sub and constitutes the valid and binding obligation of Acquirer, Merger Sub, enforceable against Acquirer and Merger Sub in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

3.4 Valid Issuance. Assuming the accuracy of the representations and warranties set forth in the Stockholder Investment Letters and the Noteholder Investment Letters, the Acquirer Common Stock, when issued as provided in this Agreement, will be duly authorized and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Agreement, the Stockholder Investment Letters and Noteholder Investment Letters, the Restated Certificate, Acquirer's bylaws and under applicable state and federal securities laws.

3.5 Governmental Consents. Except for the filing of the Certificate of Merger, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority is required on the part of Acquirer or Merger Sub in order to enable Acquirer or Merger Sub to execute, deliver and perform their obligations under the Transaction Agreements, except for such qualifications or filings under applicable securities laws as may be required in connection with the transactions contemplated by this Agreement. All such qualifications and filings will,

in the case of qualifications, be effective on the Closing and will, in the case of filings, be made within the time prescribed by law.

3.6 Merger Sub Operations. Merger Sub is wholly owned directly by Acquirer, was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby.

ARTICLE IV

CONDUCT PRIOR TO THE EFFECTIVE TIME

4.1 Conduct of the Business; Notices. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Effective Time (the "***Pre-Closing Period***"), the Company shall:

(a) conduct the Company's business solely in the ordinary course consistent with past practice (except to the extent expressly provided otherwise herein or as consented to in writing by Acquirer) and in compliance with applicable law;

(b) (i) pay and perform all of its undisputed debts and other obligations (including Taxes) when due, (ii) use commercially reasonable efforts consistent with past practice and policies to collect accounts receivable when due and not extend credit outside of the ordinary course of business consistent with past practice, (iii) sell the Company's products and services consistent with past practice as to discounting, license, service and maintenance terms, incentive programs and revenue recognition and other terms and (iv) use its commercially reasonable efforts consistent with past practice and policies to preserve intact its present business organizations, keep available the services of its present officers and key employees and preserve its relationships with Noteholders, customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, to the end that its goodwill and ongoing businesses shall be unimpaired at the Closing;

(c) assure that each of its Contracts (other than with Acquirer) entered into after the Agreement Date will not require the procurement of any consent, waiver or novation or provide for any change in the obligations of any party thereto in connection with, or terminate as a result of the consummation of, the Merger, and shall give reasonable advance notice to Acquirer prior to allowing any Company Material Agreement or right thereunder to lapse or terminate by its terms;

(d) maintain each of its leased premises in accordance with the terms of the applicable lease;

(e) promptly notify Acquirer of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Merger;

(f) promptly notify Acquirer of any notice or other communication from any Governmental Entity (i) relating to the Merger, (ii) indicating that any required authorization has been or is about to be revoked or (iii) indicating that any authorization is required in any jurisdiction in which such required authorization has not been obtained, which revocation or failure to obtain has had or would reasonably be expected to be material to Acquirer (following the Effective Time) or the Company;

(g) promptly notify Acquirer of any inaccuracy in or breach of any representation, warranty or covenant of the Company herein; provided that the phrase "as of the Agreement Date" in any such representation or warranty shall be disregarded for such purpose; and

(h) to the extent not otherwise required by this Section 4.1, promptly notify Acquirer of any change, occurrence or event not in the ordinary course of business, or of any change, occurrence or event that, individually or in the aggregate with any other changes, occurrences and events, would reasonably be expected to be materially adverse to the Company or cause any of the conditions to the Closing set forth in Article VI not to be satisfied.

4.2 Restrictions on Conduct of the Business. Without limiting the generality or effect of the provisions of Section 4.1, except as expressly set forth on Schedule 4.2 of the Company Disclosure Schedule, during the Pre-Closing Period, the Company shall not do, cause or permit any of the following (except to the extent expressly provided otherwise herein or as consented to in writing by Acquirer):

(a) Charter Documents. Cause, propose or permit any amendments to the Certificate of Incorporation or the Bylaws or equivalent organizational or governing documents;

(b) Merger, Reorganization. Merge or consolidate itself with any other Person or adopt a plan of complete or partial liquidation, dissolution, consolidation, restructuring, recapitalization or other reorganization;

(c) [redacted]

(d) Company Material Agreements. (i) Enter into, amend or modify any (A) Contract that would (if entered into, amended or modified prior to the Agreement Date) constitute a Company Material Agreement, (B) other material Contract or (C) Contract requiring a novation or consent in connection with the Merger, (ii) violate, terminate, amend or modify (including by entering into a new Contract with such party or otherwise) or waive any of the terms of any of its Company Material Agreements or (iii) enter into, amend, modify or terminate any Contract or waive, release or assign any rights or claims thereunder, which if so entered into, modified, amended, terminated, waived, released or assigned would be reasonably like to (A) adversely affect the Company (or, following consummation of the Merger, Acquirer or any of its Affiliates) in any material respect, (B) impair the ability of the Company or the Representative to perform their respective obligations under this Agreement or (C) prevent or materially delay or impair the consummation of the Merger;

(e) [redacted]

(f) Employees; Consultants; Independent Contractors. (i) Hire, or offer to hire, any additional officers or other employees, or any consultants or independent contractors, (ii) terminate the employment, change the title, office or position, or materially reduce the responsibilities of any employee of the Company, (iii) enter into, amend or extend the term of any employment or consulting agreement

with, or option held by, any officer, employee, consultant or independent contractor, (iv) enter into any Contract with a labor union or collective bargaining agreement (unless required by applicable laws) or (v) add any new members to the Board;

(g) Loans and Investments. Make any loans or advances (other than routine expense advances to employees of the Company consistent with past practice) to, or any investments in or capital contributions to, any Person, or forgive or discharge in whole or in part any outstanding loans or advances, or prepay any indebtedness for borrowed money;

(h) Intellectual Property. Transfer or license from any Person any rights to any Intellectual Property Rights, or transfer or license to any Person any rights to any Company Intellectual Property, or transfer or provide a copy of any Company Source Code to any Person (including any current or former employee or consultant of the Company or any contractor or commercial partner of the Company) (other than providing access to Company Source Code to current employees and consultants of the Company involved in the development of the Company Products on a need to know basis in the ordinary course of business consistent with past practice);

(i) Patents. Take any action regarding a patent, patent application or other Intellectual Property Rights, other than filing continuations for existing patent applications or completing or renewing registrations of existing patents, domain names, trademarks or service marks in the ordinary course of business consistent with past practice;

(j) Dispositions. Sell, lease, license or otherwise dispose or permit to lapse of any of its tangible or intangible assets, other than sales and nonexclusive licenses of Company Products in the ordinary course of business consistent with past practice, or enter into any Contract with respect to the foregoing;

(k) Indebtedness. Incur any indebtedness for borrowed money or guarantee any such indebtedness;

(l) Payment of Obligations. Pay, discharge or satisfy (i) any Liability to any Person who is an officer, director or stockholder of the Company (other than compensation due for services as an officer or director) or (ii) any claim or Liability, other than the payment, discharge or satisfaction of Liabilities reflected or reserved against in the Company Financial Statements and Transaction Expenses, or defer payment of any accounts payable, or give any discount, accommodation or other concession in order to accelerate or induce the collection of any receivable;

(m) Capital Expenditures. Make any capital expenditures, capital additions or capital improvements in excess of $1,000 in the aggregate;

(n) Insurance. Materially change the amount of, or terminate, any insurance coverage;

(o) Termination or Waiver. Cancel, release or waive any claims or rights held by the Company;

(p) Employee Benefit Plans; Pay Increases. (i) Adopt or amend any Company Employee Plan (including adoption of anything that would, upon such adoption, come within the definition of "Company Employee Plan" hereunder), including any stock issuance or stock option plan, or amend any compensation, benefit, entitlement, grant or award provided or made under any such plan, except in each case as required under ERISA or applicable laws, or as necessary to maintain the qualified status of such plan under the Code, (ii) amend any deferred compensation plan within the meaning of Section 409A of

the Code and the regulations thereunder, except to the extent necessary to meet the requirements of such Section or notice, (iii) pay any special bonus or special remuneration to any employee or non-employee director or consultant or (iv) increase the salaries, wage rates or fees of its employees or consultants;

(q) Severance Arrangements. Grant or pay, or enter into any Contract providing for the granting of any severance, retention or termination pay, or the acceleration of vesting or other benefits, to any Person;

(r) Lawsuits; Settlements. (i) Commence a lawsuit other than (A) for the routine collection of bills, (B) in such cases where the Company in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of its business (provided that the Company consults with Acquirer prior to the filing of such a suit) or (C) for a breach of this Agreement or (ii) settle or agree to settle any pending or threatened lawsuit or other dispute;

(s) Acquisitions. Acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets that are material, individually or in the aggregate, to the Company or the Company's business, or enter into any Contract with respect to a joint venture, strategic alliance or partnership;

(t) Taxes. Make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any federal, state, or foreign income Tax Return or any other material Tax Return without the consent of Acquirer prior to filing, file any amendment to a federal, state, or foreign income Tax Return or any other material Tax Return, enter into any Tax sharing or similar agreement or closing agreement, assume any Liability for the Taxes of any other Person (whether by Contract or otherwise), settle any claim or assessment in respect of Taxes, consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, enter into intercompany transactions giving rise to deferred gain or loss of any kind or take any other similar action relating to the filing of any Tax Return or the payment of any Tax if such similar action would have the effect of increasing the Tax liability of Acquirer or its Affiliates for any period ending after the Closing Date or decreasing any Tax attribute of the Company existing on the Closing Date;

(u) Accounting. Change accounting methods or practices (including any change in depreciation or amortization policies) or revalue any of its assets (including writing down the value of inventory or writing off notes or accounts receivable otherwise than in the ordinary course of business), except in each case as required by changes in GAAP as concurred with its independent accountants and after notice to Acquirer;

(v) Real Property. Enter into any agreement for the purchase, sale or lease of any real property;

(w) Encumbrances. Place or allow the creation of any Encumbrance on any of its properties, except for statutory liens for the payment of current taxes that are not yet delinquent;

(x) Warranties; Discounts. Materially change the manner in which it provides warranties, discounts or credits to customers;

(y) Interested Party Transactions. Enter into any Contract that, if entered prior to the Agreement Date, would be required to be listed on Schedule 2.12 of the Company Disclosure Schedule;

(z) Subsidiaries. Take any action that would result in the Company having one or more subsidiaries, other than those listed on Schedule 2.3 of the Company Disclosure Schedule; and

(aa) Other. Take or agree in writing or otherwise to take, any of the actions described in clauses (a) through (z) in this Section 4.2, or any action that would reasonably be expected to make any of the Company's representations or warranties contained herein untrue or incorrect (such that the condition set forth in the first sentence of Section 6.3(a) would not be satisfied) or prevent the Company from performing or cause the Company not to perform one or more covenants, agreements or obligations required hereunder to be performed by the Company (such that the condition set forth in the second sentence of Section 6.3(a) would not be satisfied).

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expense.

5.2 Corporate Matters. The Company shall, at (or as soon as reasonably practicable after) the Closing, deliver to Acquirer the minute books containing the records of all proceedings, consents, actions and meetings of the board of directors, committees of the board of directors and stockholders of the Company and the stock ledgers, journals and other records reflecting all stock issuances and transfers.

5.3 Further Action; Efforts to Effect the Merger. Upon the terms and subject to the conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws to consummate and make effective the Merger, including using its commercially reasonable efforts to obtain all permits, consents, approvals, authorizations, qualifications and orders of Governmental Entities and parties to contracts with the Company as are necessary for the consummation of the Merger. In case, at any time after the Closing Date, any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each party to this Agreement shall use their commercially reasonable efforts to take all such action.

5.4 Tax Matters.

(a) Preparation and Filing of Tax Returns; Payment of Taxes. Acquirer shall prepare and file or cause to be prepared and filed all Tax Returns of the Company for any Taxable period ending on or before the Closing Date and that portion of any Straddle Period ending on the Closing Date that are filed after the Closing Date and, subject to the indemnification obligations hereunder, shall pay or cause to be paid all Taxes due with respect to such Tax Returns. Acquirer shall provide the Representative copies of all such federal income Tax Returns and all other such material Tax Returns at least 10 days prior to their filing, shall permit the Representative to review and comment on each such Tax Return prior to filing and shall consider in good faith any comments made by the Representative with respect to such Tax Return. "***Straddle Period***" means any Tax period beginning before the Closing Date and ending after the Closing Date.

(b) Cooperation on Tax Matters. Acquirer, the Representative and the Indemnifying Investors shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Agreement and any action, suit, demand or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the

provision of records and information which are reasonably relevant to any such action, suit, demand or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Acquirer, the Representative and the Indemnifying Investors agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any Taxable period beginning before the Closing Date until the expiration of the applicable statute of limitations (and, to the extent notified by Acquirer, any extensions thereof), and to abide by all record retention agreements entered into with any governmental authority. Acquirer and the Representative further agree, upon request, to use their commercially reasonable efforts to obtain any certificate or other document from any governmental authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(c) Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other substantially similar Taxes and fees incurred in connection with this Agreement (collectively, "***Transfer Taxes***") shall be paid by the Company Stockholders.

5.5 [redacted]

5.6 Employee Notices. The Company shall give all notices and other information required to be given to the employees of the Company, any collective bargaining unit or any works council or similar body representing any employee or group of employees of the Company, and any applicable government authority under the WARN Act, the National Labor Relations Act, as amended, the Code, COBRA, the American Recovery and Reinvestment Act of 2009 and other applicable U.S. or non-U.S. Legal Requirements in connection with the transactions contemplated by this Agreement or any other Transaction Agreement.

5.7 Confidentiality.

(a) The parties hereto acknowledge that Acquirer and the Company have previously executed the Confidentiality Agreement which shall continue in full force and effect in accordance with its terms. The Representative hereby agrees to be bound by the terms and conditions of the Confidentiality Agreement to the same extent as though the Representative were a party thereto. With respect to the Representative, as used in the Confidentiality Agreement the term "Confidential Information" shall include information relating to the Merger or this Agreement received by the Representative after the Closing or relating to the period after the Closing.

(b) The Company shall not, directly or indirectly, issue any press release or other public statement relating to the terms of this Agreement or the transactions contemplated hereby or use Acquirer's name or refer to Acquirer directly or indirectly in connection with Acquirer's relationship with the Company in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of Acquirer, unless required by law (in which event a satisfactory opinion of counsel to that effect shall be first delivered to Acquirer prior to any such disclosure) and except as reasonably necessary for the Company to obtain the consents and approvals of Company Stockholders and other third parties contemplated by this Agreement. Notwithstanding anything herein or in the Confidentiality Agreement, (i) Acquirer may issue such press releases or make such other public statements regarding this Agreement or the transactions contemplated hereby as Acquirer may, in its reasonable discretion, determine and (ii) if

Acquirer issues any such press release or public statement, the Company, the Company Stockholders and the Specified Service Providers, as applicable, may issue a press releases or make other public statements limited to the fact that the Merger occurred (and in no event providing the aggregate stock consideration, valuation or other material terms) and provided further that each such press release or public statement is not inconsistent in scope or content with such press release or public statement made by Acquirer and shall be coordinated with Acquirer prior to release.

ARTICLE VI

CONDITIONS TO THE MERGER

6.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party hereto to consummate the Merger shall be subject to the satisfaction or waiver in writing at or prior to the Closing of each of the following conditions:

(a) Company Stockholder Approval. The Company Stockholder Approval shall have been duly and validly obtained.

(b) Illegality. No judgement, writ, decree, stipulation, determination, decision, award, rule, preliminary or permanent injunction, temporary restraining order or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger shall be in effect, and no action shall have been taken by any Governmental Entity seeking any of the foregoing, and no applicable law, judgment or decision shall have been enacted, entered, enforced or deemed applicable to the Merger that makes the consummation of the Merger illegal.

(c) Governmental Approvals. Acquirer, the Merger Subs and the Company shall have timely obtained from each Governmental Entity all approvals, waivers and consents, if any, necessary for consummation of, or in connection with, the Merger.

6.2 Additional Conditions to Obligations of the Company. The obligations of the Company to consummate the Merger shall be subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions (it being understood and agreed that each such condition is solely for the benefit of the Company and may be waived by the Company in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. The representations and warranties made by Acquirer herein shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality or Material Adverse Effect, which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such dates (except for representations and warranties that address matters only as to a specified date or dates, which representations and warranties shall be true and correct with respect to such specified date or dates). Acquirer shall have performed and complied in all material respects with all covenants, agreements and obligations herein required to be performed and complied with by Acquirer at or prior to the Closing.

(b) Receipt of Closing Deliveries. The Company shall have received any other agreements, instruments, certificates and other documents set forth in this Agreement.

6.3 Additional Conditions to the Obligations of Acquirer. The obligations of Acquirer and the Merger Subs to consummate the Merger shall be subject to the satisfaction or waiver at or prior to the

Closing of each of the following conditions (it being understood and agreed that each such condition is solely for the benefit of Acquirer and the Merger Subs and may be waived by Acquirer (on behalf of itself and/or the Merger Subs) in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. The Fundamental Representations shall be true and correct in all respects and all other representations and warranties made by the Acquirer herein shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality or Material Adverse Effect, which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such dates (except for representations and warranties that address matters only as to a specified date or dates, which representations and warranties shall be true and correct with respect to such specified date or dates). The Company shall have performed and complied in all material respects with all covenants, agreements and obligations herein required to be performed and complied with by the Company at or prior to the Closing.

(b) Receipt of Closing Deliveries. Acquirer shall have received each of the agreements, instruments, certificates and other documents set forth in Section 1.4(a).

(c) Injunctions or Restraints on Conduct of Business. No judgement, writ, decree, stipulation, determination, decision, award, rule, preliminary or permanent injunction, temporary restraining order or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition limiting or restricting Acquirer's ownership, conduct or operation of the Company's business following the Closing shall be in effect, and no legal proceeding seeking any of the foregoing, or any other injunction, restraint or material damages in connection with the Merger or prohibiting or limiting the consummation of the Merger, shall be pending or threatened.

(d) No Legal Proceedings. No Governmental Entity or other Person shall have commenced or threatened to commence any legal proceeding challenging or seeking the recovery of a material amount of damages in connection with the Merger or seeking to prohibit or limit the exercise by Acquirer of any material right pertaining to ownership of capital stock of Surviving Corporation.

(e) No Material Adverse Effect. There shall not have occurred a Material Adverse Effect with respect to the Company since the Agreement Date.

(f) [redacted]

(g) Employees. Each Specified Employee shall have signed an Employment Agreement, each of which shall continue to be in full force and effect and no action shall have been taken by any such individual to rescind any of such agreements.

(h) Requisite Stockholder Approval. This Agreement shall have been duly and validly adopted and the Merger shall have been duly and validly approved under Delaware Law, California Law, the Certificate of Incorporation and the Bylaws, each as in effect at the time of such adoption and approval, by holders of outstanding Company Common Stock representing the requisite stockholder approval.

ARTICLE VII

TERMINATION

7.1 Termination. At any time prior to the Closing, this Agreement may be terminated and the Merger abandoned by authorized action taken by the terminating party, whether before or after the Company Stockholder Approval is obtained:

(a) by mutual written consent duly authorized by Acquirer and the Board;

(b) by either Acquirer or the Company, by written notice to the other, if the Closing shall not have occurred within 30 days following the Agreement Date or such other date that Acquirer and the Company may agree upon in writing (the "***Termination Date***"); provided that the right to terminate this Agreement under this Section 7.1(b) shall not be available to any party whose breach of any covenant, agreement or obligation hereunder will have been the principal cause of, or shall have directly resulted in, the failure of the Closing to occur on or before the Termination Date;

(c) by either Acquirer or the Company, by written notice to the other, if any Order of a Governmental Entity of competent authority preventing the consummation of the Merger shall have become final and non-appealable;

(d) by Acquirer, by written notice to the Company, if (i) there shall have been an inaccuracy in any representation or warranty made by, or a breach of any covenant, agreement or obligation of, the Company herein and such inaccuracy or breach shall not have been cured within five Business Days after receipt by the Company of written notice of such inaccuracy or breach and, if not cured within such period and at or prior to the Closing, such inaccuracy or breach would result in the failure of any of the conditions set forth in Section 6.1 or Section 6.3 to be satisfied (provided that no such cure period shall be available or applicable to any such breach that by its nature cannot be cured), (ii) there shall have been a Material Adverse Effect with respect to the Company, or (iii) the Company Stockholder Approval is not obtained within 24 hours following the execution of this Agreement;

(e) by the Company, by written notice to Acquirer, if there shall have been an inaccuracy in any representation or warranty made by, or a breach of any covenant, agreement or obligation of, Acquirer herein and such inaccuracy or breach shall not have been cured within five Business Days after receipt by Acquirer of written notice of such inaccuracy or breach and, if not cured within such period and at or prior to the Closing, such breach would result in the failure of any of the conditions set forth in Section 6.1 or Section 6.2 to be satisfied (provided that no such cure period shall be available or applicable to any such inaccuracy or breach that by its nature cannot be cured); or

(f) by either Acquirer or the Company, if the Stockholder Meeting shall have been held and completed and the Company Stockholder Approval has not been obtained at such Stockholder Meeting or at any adjournment or postponement thereof.

7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no Liability on the part of Acquirer, the Merger Subs, the Company or their respective officers, directors, stockholders or Affiliates; provided that (i) Section 5.7 (Confidentiality), Section 5.1 (Expenses), this Section 7.2 (Effect of Termination), Article IX (General Provisions) and any related definition provisions in or referenced in Exhibit A and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement and (ii) nothing herein shall relieve any party hereto from Liability in connection with any

intentional misrepresentation made by, or a willful breach of any covenant, agreement or obligation of, such party herein.

ARTICLE VIII

[redacted]

8.1 [redacted]

representation, warranty or covenant.

8.2 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

ARTICLE IX

GENERAL PROVISIONS

9.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties hereto at the following address (or at such other address for a party as shall be specified by like notice):

(a) if to Acquirer or Merger Sub, to:

Free Stream Media Corp.
123 Townsend Street, Suite 500
San Francisco, CA 94107
Attention: General / Corporate Counsel
Email: nnena.ukuku@samba.tv
Telephone No.: 415.305.1590

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

Fenwick & West LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Attention: Samuel Angus
Scott Behar
Facsimile No.: +1 (415) 875-2300
Telephone No.: +1 (415) 281-1350
Email: sangus@fenwick.com, sbehar@fenwick.com

(b) if to the Company, to:

Axwave, Inc.
68 Willon Road
Menlo Park, CA 94205
Attention: Damian Scavo
Telephone No.: +1 (415) 309-3201
Email: d.scavo@axwave.com

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

Orrick, Herrington, Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Matteo Daste
Telephone No.: +1 (415) 773-5427
Email: mdaste@orrick.com

(c) If to the Representative, to:

Damian Scavo
68 Willon Road
Menlo Park, CA 94205
Telephone No.: +1 (415) 309-3201
Email: d.scavo@axwave.com

9.2 Interpretation. Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement, (v) the word "including" means "including without limitation" and (vi) the term

"ordinary course of business" means the "ordinary course of business, consistent with past practice." The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood that all parties hereto need not sign the same counterpart.

9.4 Amendment. This Agreement may be amended, supplemented or modified only by execution of a written instrument signed by the Acquirer, the Company, and the Representative.

9.5 Waiver. The Acquirer on behalf of itself and its Affiliates, the Company on behalf of itself and its Affiliates, and the Representative on behalf of itself and the Indemnifying Investors, may in its sole discretion (i) extend the time for the performance of any obligation or other act of any other non-Affiliated party hereto, (ii) waive any inaccuracy in the representations and warranties by such other non-Affiliated party contained herein or in any document delivered pursuant hereto and (iii) waive compliance by such other non-Affiliated party with any covenant or condition contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the parties to be bound thereby (including by the Representative in lieu of such party to the extent provided in this Agreement). Notwithstanding the foregoing, no failure or delay by a party in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder.

9.6 Entire Agreement; Nonassignability; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including all the exhibits attached hereto, the Schedules, including the Company Disclosure Schedule, (a) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof, except for the Confidentiality Agreement, which shall continue in full force and effect, and shall survive any termination of this Agreement, in accordance with its terms, (b) are not intended to confer, and shall not be construed as conferring, upon any Person other than the parties hereto any rights or remedies hereunder (except that Article VIII is intended to benefit Indemnified Persons) and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided herein.

9.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void. Notwithstanding the foregoing, Acquirer may assign this Agreement and any of its rights, interests or obligations hereunder, in connection with a merger, acquisition, sale or all or substantially all of its assets or other change in control transaction.

9.8 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably to effect the intent of the parties hereto. The parties hereto shall use all reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.9 Remedies Cumulative; Injunctive Relief. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party hereto of any one remedy shall not preclude the exercise of any other remedy. The parties hereby agree that in the event any party violates any provision of this Agreement, immediate, extensive and irreparable damage will occur for which the remedies at law available to each of the parties will be inadequate. In such event, each of the parties, in addition to all other rights and remedies it may have, shall be entitled to specific performance and/or injunctive or other equitable relief to enforce or prevent any violations by the parties, and to enforce specifically the terms and provisions hereof, without the necessity or proving inadequacy of money damages as a remedy and without the necessity of posting a bond. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

9.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without reference to such state's principles of conflicts of law. Subject to Section 9.10(h) and 9.8(i) below, any dispute hereunder ("***Dispute***") shall be settled by arbitration in San Francisco, California, and, except as herein specifically stated, in accordance with the J.A.M.S. Streamlined Arbitration Rules and Procedures then in effect (the "***J.A.M.S. Rules***"). The arbitration provisions of this Section 9.10 shall govern over any conflicting rules that may now or hereafter be contained in the J.A.M.S. Rules. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the subject matter thereof. The arbitrator shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve a Dispute.

(a) Compensation of Arbitrator. Any such arbitration will be conducted before a single arbitrator who will be compensated for his or her services at a rate to be determined by the parties or by J.A.M.S., but based upon reasonable hourly or daily consulting rates for the arbitrator in the event the parties are not able to agree upon his or her rate of compensation.

(b) Selection of Arbitrator. The parties will cooperate with J.A.M.S. in promptly selecting from an arbitrator on the J.A.M.S. panel of neutrals; provided, however, that (i) such arbitrator cannot work for a firm then performing services for either party, and (ii) each party will have the opportunity to make such reasonable objection to any arbitrators so selected. In the event that the parties cannot agree on an arbitrator within three Business Days after either party's issuance of a written demand for arbitration, J.A.M.S. will select the arbitrator.

(c) Payment of Costs. Acquirer and the Representative (on behalf of the Company Stockholders) will bear the expense of deposits and advances required by the arbitrator in equal proportions, but either party may advance such amounts, subject to recovery as an addition or offset to any award. The arbitrator will award to the prevailing party, as determined pursuant to Section 8.6(c), all costs, fees and expenses related to the arbitration, including reasonable fees and expenses of attorneys, accountants and other professionals incurred by the prevailing party.

(d) Burden of Proof. For any Dispute submitted to arbitration, the burden of proof will be as it would be if the claim were litigated in a judicial proceeding.

(e) Award. Upon the conclusion of any arbitration proceedings hereunder, the arbitrator will render findings of fact and conclusions of law and a written opinion setting forth the basis

and reasons for any decision reached and will deliver such documents to each party to this Agreement along with a signed copy of the award.

(f) Terms of Arbitration. The arbitrator chosen in accordance with the provisions of this Section 9.10 will not have the power to alter, amend or otherwise affect the provisions of this Agreement, including the terms of these arbitration provisions.

(g) Confidentiality. At the request of any party, the mediators, arbitrators, attorneys, parties to the mediation or arbitration, witnesses, experts, court reporters, or other persons present at a mediation or arbitration shall agree in writing to maintain the strict confidentiality of the proceedings.

(h) Emergency Relief. A party may apply either to a court of competent jurisdiction, or to an arbitrator if one has been appointed, for prejudgment remedies and emergency relief pending final determination of a claim in accordance with this Section 9.10. The appointment of an arbitrator does not preclude a party from seeking prejudgment remedies and emergency relief from a court of competent jurisdiction.

9.11 Rules of Construction. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, each Schedule and each Exhibit attached hereto, the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

9.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

[SIGNATURE PAGE NEXT]

IN WITNESS WHEREOF, Acquirer, Merger Sub, the Company and the Representative have each caused this Agreement to be executed and delivered individually or by their respective officers thereunto duly authorized, all as of the date first written above.

FREE STREAM MEDIA CORP.

By:_____

Name: Ashwin Navin
Title: CEO

ASTRO ACQUISITION CORP.

By:_____

Name:_____
Title:_____

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, Acquirer, Merger Sub, the Company and the Representative have each caused this Agreement to be executed and delivered individually or by their respective officers thereunto duly authorized, all as of the date first written above.

FREE STREAM MEDIA CORP.

By: _____

Name: Ashwin Navin
Title: CEO

ASTRO ACQUISITION CORP.

By: _____

Name: Nnena Ukuku
Title: CEO

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, Acquirer, Merger Sub, the Company and the Representative have each caused this Agreement to be executed and delivered individually or by their respective officers thereunto duly authorized, all as of the date first written above.

AXWAVE, INC.

By: Damian Scavo
Name: Damian Scavo
Title: CEO

DAMIAN SCAVO, AS THE REPRESENTATIVE

Damian Scavo

SCHEDULE 1.1
Certain Definitions

[redacted]

[redacted]

"***Company Board***" shall mean the board of directors of the Company.

[redacted]

Schedule 1.1

[redacted]

"***Damages***" means any and all losses, liabilities, damages, reductions in value, judgments, settlements, Taxes, costs and expenses, including costs of investigation, settlement, and defense, legal and consulting fees and alternative dispute resolution and court costs, and any interest costs or penalties.

[redacted]

"***Encumbrances***" means any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim or restriction of any nature.

[redacted]

"***Fundamental Representations***" mean the representations and warranties made in Section 2.1 (Organization, Good Standing, Corporate Power and Qualification), Section 2.2 (Capitalization), Section 2.4 (Due Authorization), Section 2.8 (Intellectual Property), Section 2.10 (Title to Property and Assets), Section 2.15 (Tax Returns and Payments), and Section 2.18 (Employee Matters).

"***GAAP***" means United States generally accepted accounting principles applied on a consistent basis.

"***Governmental Entity***" means any supranational, national, state, municipal, local or foreign government, any court, tribunal, arbitrator, administrative agency, commission or other governmental official, authority or instrumentality, in each case whether domestic or foreign, any stock exchange or similar self-regulatory organization or any quasi-governmental or private body exercising any regulatory, Taxing or other governmental or quasi-governmental authority.

[redacted]

"***Key Employee Service Condition***" shall be deemed satisfied only if each and all of the Key Employees listed on Schedule 1.1(a) hereto continues to provide service as a full-time employee of Acquiror (or a subsidiary thereof), unless such Key Employee has been terminated by Acquiror without Cause, as defined in the offer letter for such Key Employee.

"***Key Employees***" means each of Maciej Donajaski, Alexander Skalozubov, Piotr Skwirzynski, Emanuele Mazzoni and Damian Scavo.

"***Knowledge***" means the actual knowledge of each of the Specified Service Providers and each member of the Company Board and the knowledge each such individual would be expected to have discovered or otherwise become aware after reasonable inquiry and investigation.

"***Legal Requirements***" means any federal, state, foreign, local, municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity and any orders, writs, injunctions, awards, judgments and decrees applicable to the Company or to any of its assets, properties or businesses.

"***Liabilities***" (and, with correlative meaning, "***Liability***") means all debts, liabilities, commitments and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, liquidated or unliquidated, asserted or unasserted, known or unknown, whenever or however arising, including those arising under applicable law or any action, suit, proceeding or investigation or order of a Governmental Entity and those arising under any Contract, regardless of

whether such debt, liability, commitment or obligation would be required to be reflected on a balance sheet prepared in accordance with GAAP or disclosed in the notes thereto.

"***Material Adverse Effect***" means with respect to any entity means any change, event, violation, inaccuracy, circumstance or effect (each, an "***Effect***") that, individually or taken together with all other Effects, and regardless of whether or not such Effect constitutes a breach of the representations, warranties, covenants and agreements made by such entity in this Agreement, is, or is reasonably likely to, (i) be or become materially adverse in relation to the condition (financial or otherwise), assets (including intangible assets) (taken as a whole), or liabilities (taken as a whole) of such entity, except to the extent that any such Effect relates to (A) changes in general economic conditions of the United States or foreign economies, currencies or securities or financial markets; (B) changes generally affecting the industry in which such entity operates; (C) acts of God, earthquakes, hostilities, acts of sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of sabotage or terrorism or military actions; or (D) changes in Legal Requirements or accounting rules; provided, however, in each of cases (A)-(D) above, such changes do not affect such entity disproportionately as compared to such entity's competitors, or (ii) materially impede or delay such entity's ability to consummate the transactions contemplated by this Agreement in accordance with its terms and applicable Legal Requirements.

"***Milestone Representative***" shall initially mean Damian Scavo, for so long as Damian Scavo continues to provide service as a full-time employee of the Acquirer or a subsidiary and, following that time, shall mean one of the Specified Service Providers, as selected by Acquirer.

"***Noteholder***" means each holder of a convertible promissory note of the Company.

"***Person***" means any natural person, company, corporation, limited liability company, general partnership, limited partnership, trust, proprietorship, joint venture, business organization or Governmental Entity.

[redacted]

"***Samba Replacement Notes***" means Convertible Promissory Notes of the Acquirer, in the form of Exhibit J.

[redacted]

"***Securities Act***" means the Securities Act of 1933, as amended, and the regulations promulgated thereunder.

[redacted]

"***Tax***" (and, with correlative meaning, "***Taxes***" and "***Taxable***") means (a) any net income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, capital stock, profits, license, registration, withholding, payroll, social security

(or equivalent), employment, unemployment, disability, excise, severance, stamp, occupation, premium, property (real, tangible or intangible), environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount (whether disputed or not) imposed by any Governmental Entity responsible for the imposition of any such tax (domestic or foreign) (each, a "***Tax Authority***"), (b) any liability for the payment of any amounts of the type described in clause (a) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any Taxable period, and (c) any liability for the payment of any amounts of the type described in clause (a) or (b) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person.

"***Tax Representations***" mean the representations and warranties made in Section 2.15 (Tax Returns and Payments).

"***Tax Return***" means any return, statement, report or form (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, and information returns and reports) required to be filed with respect to Taxes.

"***Transaction Agreements***" means this Agreement, the Stockholder and Noteholder Investment Letters, the Employment Agreements and the Non-Competition Agreements.

"***Transaction Expenses***" means (i) all third party fees and expenses incurred by the Company in connection with the Merger, this Agreement and the transactions contemplated hereby, whether or not billed or accrued (including any fees and expenses of legal counsel and accountants, the maximum amount of fees and expenses payable to financial advisors, investment bankers and brokers of the Company and any such fees incurred by the Company Stockholders, Noteholders or Company employees, contractors or other service providers if required or promised to be paid by the Company) and (ii) any fees and expenses associated with obtaining necessary or appropriate waivers, consents or approvals of any Governmental Entity or of any third party on behalf of the Company in connection with the transactions contemplated by this Agreement.

"***Year One Product Milestone Attainment Percentage***" means the percentage that is the aggregate of all the percentages actually earned based on Acquirer's good faith calculation (made in its sole and absolute discretion) of the Year 1 Product Milestones 1 through 6 in accordance with Schedule 1.9(e)-1. The highest Year One Product Milestone Attainment Percentage shall be 100% and the lowest shall be 0%.

"***Year Two Product Milestone Attainment Percentage***" means the percentage that is the aggregate of all the percentages actually earned based on Acquirer's good faith calculation (made in its sole and absolute discretion) of the Year 2 Product Milestones 1 through 6 in accordance with Schedule 1.9(e)-1. The highest Year Two Product Milestone Attainment Percentage shall be 100% and the lowest shall be 0%.

SCHEDULE 1.1(A)

Key Employee List

1. Maciej Donajaski
2. Alexander Skalozubov
3. Piotr Skwirzynski
4. Emanuele Mazzoni
5. Damian Scavo

SCHEDULE 1.9(E)-1

Product Milestones

Definitions:

- "**Channels**" means a list of television stations that can be received through either terrestrial or cable/satellite feeds.

- "**End-user**" means the active mobile users that will be made available for passive data collection.

- "**Harvesting Solutions**" means the solution that automatically identifies and ingests commercial content from captured video sources.

- "**Tier 1 Countries**" means UK, Germany, France, Italy, Spain, Netherlands.

- "**Tier 2 Countries**" means a list of European countries, mutually agreed-upon by the Milestone Representative and the Acquirer, and that are not Tier 1 Countries.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]