

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

EPAS ID: PAT5824568

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| <b>SUBMISSION TYPE:</b>   | NEW ASSIGNMENT   |
| <b>NATURE OF CONVEYANCE:</b>  | AGREEMENT ANCILLARY TO FORECLOSURE SALE AND ASSET PURCHASE AGREEMENT |
| <b>CONVEYING PARTY DATA</b>   |  |
| <b>Name</b>   | <b>Execution Date</b>  |
| KIMBIA, INC.  | 01/18/2018   |
| <b>RECEIVING PARTY DATA</b>   |  |
| <b>Name:</b>  | GIVEGAB, INC.  |
| <b>Street Address:</b>  | 119 S. CAYUGA ST., SUITE 403   |
| <b>City:</b>  | ITHACA   |
| <b>State/Country:</b>   | NEW YORK   |
| <b>Postal Code:</b>   | 14850  |
| <b>PROPERTY NUMBERS Total: 1</b>  |  |
| <b>Property Type</b>  | <b>Number</b>  |
| <b>Application Number:</b>  | 16682641   |
| <b>CORRESPONDENCE DATA</b>  |  |
| <b>Fax Number:</b>  |  |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> |  |
| <b>Phone:</b>   | 5126379220   |
| <b>Email:</b>   | DNARVAIZ@SPRINKLELAW.COM   |
| <b>Correspondent Name:</b>  | SPRINKLE IP LAW GROUP  |
| <b>Address Line 1:</b>  | 1301 W. 25TH STREET  |
| <b>Address Line 2:</b>  | SUITE 408  |
| <b>Address Line 4:</b>  | AUSTIN, TEXAS 78705  |
| <b>ATTORNEY DOCKET NUMBER:</b>  | GIVE1100-3   |
| <b>NAME OF SUBMITTER:</b>   | ARIYEH AKMAL   |
| <b>SIGNATURE:</b>   | /ariyeh g akmal/   |
| <b>DATE SIGNED:</b>   | 11/18/2019   |
| <b>Total Attachments: 90</b>  |  |
| source=GIVE1100-3 Ancillary Agreement and Asset Purchase Agmt - KIMBIA to GiveGab#page1.tif   |  |
| source=GIVE1100-3 Ancillary Agreement and Asset Purchase Agmt - KIMBIA to GiveGab#page2.tif   |  |
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**AGREEMENT ANCILLARY TO FORECLOSURE SALE**

This AGREEMENT ANCILLARY TO FORECLOSURE SALE (this "*Agreement*") is made and entered into as of January 18, 2018 (the "*Agreement Date*"), by and among GiveGab, Inc., a Delaware corporation ("*Buyer*"), Kimbia, Inc., a Delaware corporation (the "*Company*"), and the holders of the Company's subordinated debt listed on Exhibit A hereto (the "*Holders*").

**RECITALS**

A. Pacific Western Bank, successor in interest by merger to Square 1 Bank ("*Lender*"), and the Company are parties to that certain Loan and Security Agreement dated April 28, 2016 (such agreement, as amended or modified from time to time, together with all documents, instruments and agreements related thereto, the "*Loan Documents*").

B. The Company is in default under the Loan Documents.

C. Under the terms of the Loan Documents, such default entitles Lender to sell the Company's right, title and interest in and to the Collateral (as defined in the Loan Documents) in accordance with the provisions of Article 9 of the Uniform Commercial Code as adopted in North Carolina (the "*UCC*").

D. Lender sent to Debtor a Notification of Disposition of Collateral on January 5, 2018 and a second Notification of Disposition of Collateral on January 11, 2018.

E. Lender and Buyer have entered into an Asset Purchase Agreement of even date herewith (the "*Asset Purchase Agreement*"), pursuant to which Lender will sell to Buyer and Buyer will purchase from Lender (the "*Asset Purchase*") substantially all of the Company's right, title and interest in and to certain of the Collateral in a disposition by private sale pursuant to the Loan Documents and the UCC, Buyer's willingness to enter into the Asset Purchase Agreement and consummate the Asset Purchase is conditioned upon the Company's entering into this Agreement.

F. The Board of Directors of the Company (the "*Board*") has determined that the Purchase Price is sufficient to repay in full the Company's outstanding indebtedness to Lender under the Loan Documents and to provide additional proceeds for the settlement of certain of the Company's other outstanding creditor obligations. Consequently, the Board has determined that it would be advisable and in the best interests of the Company and its creditors and stockholders that the Company enter into this Agreement, and, in furtherance thereof, has approved this Agreement and the transactions contemplated by this Agreement (the "*Transactions*").

G. The Company and Buyer desire to make certain representations, warranties, covenants and other agreements in connection with the Asset Purchase.

H. The Board of Directors and the stockholders of Buyer have approved this Agreement and the Transactions.

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, and in order to maximize the value to be provided by Buyer to Lender and the Company's ability to pay its creditors, the parties hereto hereby agree as follows:

ARTICLE I  
ASSISTANCE WITH PURCHASE AND SALE

1.1 Certain Definitions. As used in this Agreement, the following terms shall have the meanings indicated below:

- (i) “*Affiliate*” has the meaning set forth in Rule 145 promulgated under the Securities Act.
- (ii) “*Assigned Agreement*” has the meaning set forth in the Asset Purchase Agreement.
- (iii) “*Assigned Business Agreements*” has the meaning set forth in the Asset Purchase Agreement.
- (iv) “*Business*” means the Company’s business as previously conducted and currently conducted.
- (v) “*Business Day*” means a day (a) other than Saturday or Sunday and (b) on which commercial banks are open for business in New York, NY.
- (vi) “*Closing*” and “*Closing Date*” each has the meaning set forth in the Asset Purchase Agreement.
- (vii) “*Closing Accounts Payable Certificate*” means a true, correct and complete list of all of the Company’s accounts payable as of Closing, which has been delivered by the Company to Buyer in writing at least one (1) day prior to the Closing and certified by the Chief Financial Officer of the Company.
- (viii) “*Closing Deferred Revenue*” means the aggregate amount of deferred revenue of the Business as of the Closing, which amount has been delivered by the Company to Buyer in writing at least one (1) day prior to the Closing and certified by the Chief Financial Officer of the Company (such certificate, the “*Closing Deferred Revenue Certificate*”).
- (ix) “*COBRA*” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- (x) “*Code*” means the United States Internal Revenue Code of 1986, as amended.
- (xi) “*Company Ancillary Agreement*” means the Confirmatory Trademark Assignment Agreement and the Confirmatory Patent Assignment Agreement entered into between the Company and Buyer.
- (xii) “*Contingent Payment*” has the meaning set forth in the Asset Purchase Agreement.
- (xiii) “*Contract*” means any written or oral legally binding contract, agreement, instrument, commitment or undertaking of any nature (including leases, licenses, mortgages, notes, guarantees, sublicenses, subcontracts and purchase orders).

(xiv) “*Encumbrance*” means any lien, pledge, charge, mortgage, easement, encroachment, imperfection of title, title exception, title defect, right of possession, lease, security interest, adverse claim of title, interference or restriction on transfer but, excluding, with respect to Intellectual Property, non-exclusive rights granted under Intellectual Property by the Company in the ordinary course of business.

(xv) “*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended.

(xvi) “*ERISA Affiliate*” means any other person or entity under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

(xvii) “*Excluded Assets*” has the meaning as set forth in the Asset Purchase Agreement.

(xviii) “*Excess Funds*” has the meaning as set forth in the Asset Purchase Agreement.

(xix) “*Excluded Services Liabilities*” has the meaning set forth in the Asset Purchase Agreement.

(xx) “*Fraud*” means actual willful breach or intentional misrepresentation committed by a party to this Agreement against an Indemnified Person.

(xxi) “*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.

(xxii) “*Indemnity Amount*” means the aggregate amount of cash payable, but not yet paid, to the Company pursuant to Section 1.8.

(xxiii) “*IP Assignment Agreements*” has the meaning set forth in the Asset Purchase Agreement.

(xxiv) “*IRS*” means the Internal Revenue Service.

(xxv) “*knowledge*” means, with respect to any fact, circumstance, event or other matter in question, the actual knowledge of such fact, circumstance, event or other matter after reasonable inquiry of (a) an individual, if used in reference to an individual, and (b) with respect to any Person that is not an individual, the executive officers of such Person; *provided* that any executive officer will be deemed to have knowledge of a particular fact, circumstance, event or other matter if (1) such fact, circumstance, event or other matter is reflected in one or more documents (whether written or electronic, including electronic mails sent to or by such individual) in, or that have been in, the possession of such executive officer, including his or her personal files, (2) such fact, circumstance, event or other matter is reflected in one or more documents (whether written or electronic) contained in books and records of such officer’s employer that would reasonably be expected to be reviewed by an individual with the duties and responsibilities of such executive officer, or (3) such knowledge could be obtained from reasonable inquiry of the persons charged with administrative or operational

responsibility for such officer's employer, to the extent such fact, matter, event or other circumstance is within the scope of responsibilities of such executive officer. With respect to Intellectual Property, the "Company's knowledge" (and words of similar import) does not require the Company or any individual to conduct, have conducted, obtain, or have obtained any freedom-to-operate opinions or similar opinions of counsel or any Intellectual Property Rights clearance searches, and no knowledge of any third-party Intellectual Property Rights that would have been revealed by such inquiries, opinions, or searches will be imputed to the Company.

(xxvi) "**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, order, writ, injunction, award, judgment or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

(xxvii) "**Liabilities**" means all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, asserted or unasserted, known or unknown, including those arising under any law, action or governmental order and those arising under any Contract.

(xxviii) "**Multiemployer Plan**" shall mean any "Pension Plan" (as defined below) which is a "multiemployer plan," as defined in Section 3(37) of ERISA.

(xxix) "**Non-Scheduled In-Licenses**" means (a) "shrink wrap" and similar generally available commercial end-user licenses or grants of rights to or under Proprietary Information or Technology (including technology offered on a SaaS, PaaS, or IaaS or similar basis and software available through retail stores, distribution networks or that is pre-installed as a standard part of hardware purchased by the Company) that have an individual acquisition cost of \$1,000 or less; (b) Contracts for Open Source Materials, (c) Contracts with current and former employees or contractors, and (d) non-disclosure agreements entered into in the ordinary course.

(xxx) "**Non-Scheduled Out-Licenses**" means: (a) Contracts where the only licenses or rights granted by the Company are non-exclusive rights granted to contractors or vendors to use Company Intellectual Property for the sole benefit of the Company, (b) non-disclosure agreements entered into in the ordinary course, (c) Standard End User Contracts.

(xxxi) "**Pension Plan**" shall refer to each Benefit Plan which is an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA.

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

(xxxiii) "**Purchase Price**" has the meaning set forth in the Asset Purchase Agreement.

(xxxiv) "**Purchased Assets**" has the same meaning as "Transferred Assets" in the Asset Purchase Agreement.

(xxxv) "**Purchased Intellectual Property**" means the Company Owned Intellectual Property (including the Company Registered Purchased Intellectual Property, defined in the Asset Purchase Agreement), as set forth on Schedule 1.1(a)(ii) to the Asset Purchase Agreement.

(xxxvi) “*Securities Act*” means the Securities Act of 1933, as amended.

(xxxvii) “*Subordinated Debt*” means those certain promissory notes issued pursuant to that certain Note and Warrant Purchase Agreement dated February 29, 2016, as amended on August 15, 2016, February 8, 2017, and June 29, 2017, and all amounts due thereunder.

(xxxviii) “*Subsidiary*” of a specified entity means any corporation, association, business entity, partnership, limited liability company or other Person of which the specified entity, either alone or together with one or more Subsidiaries or by one or more other Subsidiaries (a) directly or indirectly owns or controls securities or other interests representing more than 50% of the voting power of such Person or (b) is entitled, by contract or otherwise, to elect, appoint or designate directors constituting a majority of the members of such Person’s board of directors or other governing body.

(xxxix) “*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.

(xl) “*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.

(xli) “*Treasury Regulations*” means the United States Treasury Regulations promulgated under the Code.

Other capitalized terms defined elsewhere in this Agreement and not defined in this Section 1.1 shall have the meanings assigned to such terms in this Agreement.

1.2 Purchased Assets. To the extent that any tangible or intangible assets (including any accounts receivable) or rights are discovered or identified at any time after the Closing that constitute Purchased Assets pursuant to the Asset Purchase Agreement (or would have been if such assets or rights qualified as Purchased Assets and had been listed in the applicable schedules or otherwise previously disclosed to Buyer) in the Asset Purchase, the Company shall immediately notify Buyer and Lender of such discovery and, upon request from Buyer or Lender, the Company shall immediately transfer and promptly deliver, or assist and cooperate with Lender to immediately transfer and promptly deliver, the requested assets or rights (or cause them to be delivered) to Buyer (together with executed instruments of conveyance as necessary to transfer all of the Company’s rights, title and interest therein) without additional payment or other consideration and such additional assets shall constitute Purchased Assets. In furtherance of the foregoing, if the Company receives any accounts receivable that qualify as a



Purchased Asset, the Company shall promptly (and within three (3) Business Days) notify Lender and Buyer, and assist and cooperate with Lender to remit such accounts receivable to Buyer.

1.3 Excluded Assets. Buyer and the Company acknowledge and agree that in connection with the Asset Purchase, the Purchased Assets shall not include any Excluded Assets.

1.4 Assumed Liabilities. Buyer and the Company acknowledge and agree that in connection with the Asset Purchase, other than the Liabilities associated with the performance of services under the Assigned Business Agreements for the period following the Closing (the "*Assumed Liabilities*"), Buyer shall assume no Liabilities or other obligations of the Company, any Affiliate or any Holder or stockholder of the Company other than Assumed Liabilities, whether currently existing or hereinafter created, including but not limited to any Liabilities arising out of or relating to (a) the use or ownership of the Purchased Assets or the operation of the Business by the Company prior to the Closing or any Liabilities arising out of the Purchased Assets or the operation of the Business by the Company prior to the Closing, (b) any Liability relating to Taxes of the Company or any Liabilities of any Person other than the Company that are imposed on the Company under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise; (c) all Liabilities of the Company for Taxes incident to or arising out of the negotiation, preparation, approval or authorization of this Agreement or the Asset Purchase (including all Transaction Taxes), (d) the Benefits Liabilities, (e) any Liability with respect to any employee or consultant of the Company related to such employee or consultant's employment or services with the Company, including but not limited to the Excluded Services Liabilities and any Liabilities relating to, wrongful discharge, employment discrimination, severance, the termination of such employee or consultant's employment or services with the Company whether or not in connection with the Transactions and employee or consultant withholding or reporting Tax Liabilities, (f) the Excluded Assets, and (g) all fees and expenses incurred by the Company or any Affiliate of the Company in connection with the Transactions (collectively, the "*Excluded Liabilities*"). Buyer assumes, and will be solely responsible for paying, performing and discharging the Assumed Liabilities. For the avoidance of doubt, Buyer's assumption of the Assumed Liabilities shall be subject to the consummation of the Closing.

1.5 Liabilities. The Company acknowledges and agrees that it will retain, and will be solely responsible for paying, performing and discharging, and Buyer will not assume or otherwise have any responsibility or liability for, and the Company will retain, and will be solely responsible for paying, performing and discharging promptly when due, any Excluded Liabilities.

1.6 Assignment of Contracts and Rights. Subsequent to the Closing, Buyer and the Company will use their reasonable efforts (but without any payment of money by the Company or Buyer) to obtain the consent of other necessary parties to the sale or assignment of any Purchased Asset or claim or right or any benefit arising thereunder for the assignment thereof to Buyer.

1.7 Method of Delivery of Assets, Transaction Taxes. The Company shall assist and cooperate with Lender to deliver to Buyer in the form and to the location to be determined by Buyer in its reasonable discretion and at reasonable cost and expense, which shall be paid by the Company, all of the Purchased Assets; provided, that, to the extent practicable and at the request of Buyer, the Company shall assist and cooperate with Lender to deliver all of the applicable Purchased Assets, including all software and software documentation, through electronic transmission. The Company will pay all sales, transfer, bulk sales, stamp, use or other similar Taxes associated with the transfer of the Purchased Assets (any such Taxes, "*Transaction Taxes*") and deliver evidence of such payment to Lender promptly after it is made. The Company and Buyer shall cooperate in good faith to mitigate or reduce the incidence of any Transaction Taxes.

1.8 Contingent Payment. Subject to Lender's determination that the Contingent Payment portion of the Purchase Price constitutes Excess Funds in accordance with Section 1.6 of the Asset Purchase Agreement; Buyer shall pay any applicable Contingent Payment (or portion thereof) directly to the Company, if and when such payment is due and payable pursuant to Section 1.6 of the Asset Purchase Agreement. Upon the receipt of any applicable Contingent Payment (or portion thereof), the Company shall provide payment to the Company's creditor claims, and thereafter, if applicable, to the Holders as contemplated by the Plan of Liquidation. The Company may assign the right to such payment to the Holders in accordance with this Agreement and the Plan of Liquidation. For the avoidance of doubt, each payment set forth in Section 1.6(c)(i) and Section 1.6(c)(ii) of the Asset Purchase Agreement is a separate payment, independent of each other, and governed by the terms of Section 1.6(c)(i) and Section 1.6(c)(ii), respectively. The Contingent Payment shall be subject to delay in payment, and/or reduction or elimination, resulting from any indemnification claims made by Buyer against the Company or the Holders pursuant to Article VIII.

1.9 Withholding Rights. Buyer shall be entitled to deduct and withhold from the consideration otherwise deliverable under this Agreement, and from any other payments otherwise required pursuant to this Agreement, to the Company such amounts as Buyer is required to deduct and withhold with respect to any such deliveries and payments under any applicable Tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to such holders in respect of which such deduction and withholding was made.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the disclosure letter of the Company delivered to Buyer concurrently with the parties' execution of this Agreement (the "*Company Disclosure Schedule*"), each of which disclosures shall clearly indicate the Section and, if applicable, the Subsection of this Article II to which it relates (but any information included in the Company Disclosure Schedule under any section or Subsection thereof shall be deemed to be disclosed and incorporated by reference into any other Section or Subsection under this Agreement where the relevance of such disclosure is readily apparent based upon the actual text of such disclosure), and each of which disclosures shall also be deemed to be representations and warranties made by the Company to Buyer. The Company represents and warrants to Buyer as of the Agreement Date and as of the Closing Date (unless the particular statement speaks expressly as of another date or time, in which case as of such other date or time) as follows:

2.1 Organization, Standing, Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite power and authority to own, operate and lease its properties and to conduct its Business and is duly qualified to do business and is in good standing in each jurisdiction where the failure to be so qualified or in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to have any material adverse effect on the Company or the Purchased Assets. The Company has and, since its inception has had, no Subsidiaries or any equity or ownership interest, whether direct or indirect, in, or any loans to, any corporation, partnership, limited liability company, joint venture or other business entity.

2.2 Authority; Noncontravention.

(a) The Company has all requisite corporate power and authority to enter into this Agreement and the Company Ancillary Agreements and to consummate the Transactions. The execution and delivery of this Agreement the Company Ancillary Agreements and the consummation of the

Transactions have been duly authorized by all necessary corporate action on the part of the Company. This Agreement has been duly executed and delivered by the Company. This Agreement and the Company Ancillary Agreements constitute valid and binding obligations of the Company enforceable against the Company in accordance with their respective 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. The Board of Directors of the Company, by resolutions duly adopted (and not thereafter modified or rescinded) by the unanimous vote of the full Board of Directors of the Company, has (A) approved the terms of this Agreement and the Company Ancillary Agreements, (B) determined that this Agreement and the Company Ancillary Agreements are advisable to and in the best interests of the Company and its creditors and stockholders. The principal terms of this Agreement have been approved by all Holders. The execution and delivery by the Company of this Agreement and the Company Ancillary Agreements does not and will not require the approval of the Company's stockholders under any Legal Requirements, the Certificate of Incorporation or Bylaws of the Company, in each case as amended to date and any contract applicable to the Company or any of the Purchased Assets.

(b) The execution and delivery by the Company of this Agreement and the Company Ancillary Agreements do not, and the consummation of the Transactions will not (i) result in the creation of any Encumbrance on any of the Purchased Assets or (ii) conflict with, or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person pursuant to, (A) any provision of the Certificate of Incorporation or Bylaws of the Company, in each case as amended to date, (B) any Contract applicable to the Company or any of the Purchased Assets, or (C) any Legal Requirements applicable to the Company or any of the Purchased Assets.

(c) Schedule 2.2(c) of the Company Disclosure Schedule lists all consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity required by or with respect to the Company in connection with the execution and delivery of this Agreement or the Company Ancillary Agreements or the consummation of the transactions contemplated hereby and thereby.

2.3 Capital Structure. Schedule 2.3 of the Company Disclosure Schedule sets forth a complete list as of the Agreement Date of all security holders of the Company along with the type and number of securities held by each such holder. Other than the securities set forth on Schedule 2.3 of the Company Disclosure Schedule, there are no other issued and outstanding shares of capital stock or other securities of the Company, no rights convertible into capital stock or other securities of the Company, and no outstanding commitments or Contracts to issue shares of capital stock or other securities of the Company.

#### 2.4 Company Financial Information.

(a) Schedule 2.4(a) of the Company Disclosure Schedule contains a true, correct and complete list of all of the Company's assets and Liabilities as of the Agreement Date. Such list (i) is derived from and in accordance with the books and records of the Company, (ii) complies in all material respects with accounting requirements applicable thereto, and (iii) fairly presents the assets and Liabilities of the Company.

(b) The Company has delivered to Buyer its audited consolidated financial statements for the fiscal years ended December 31, 2015 and December 31, 2016 and its unaudited consolidated financial statements for the 11-month period ended November 30, 2017 (including, in each

case, balance sheets, statements of operations and statements of cash flows) (collectively, the “*Financial Statements*”), which are included as Schedule 2.4(b) of the Company Disclosure Schedule. The Financial Statements (i) are derived from and in accordance with the books and records of the Company, (ii) complied, as to form, with applicable accounting requirements with respect thereto as of their respective dates, (iii) fairly and accurately present in all material respects the consolidated financial condition of the Company at the dates therein indicated and the consolidated results of operations and cash flows of the Company for the periods therein specified, and (iv) are true, complete and correct in all material respects.

(c) The Company has no Liabilities of any nature other than those set forth or adequately provided for in the balance sheet included in the Financial Statements as of November 30, 2017 (such date, the “*Company Balance Sheet Date*”), except (i) Liabilities in connection with this Agreement and the Company Ancillary Agreements, (ii) Liabilities which have arisen in the ordinary course of business consistent with past practice since the Company Balance Sheet Date (none of which is a Liability for breach of contract, breach of warranty, tort, infringement or violation of law). Except for Liabilities reflected in the Financial Statements, the Company has no off balance sheet Liability of any nature to, or any financial interest in, any third party or entities, the purpose or effect of which is to defer, postpone, reduce or otherwise avoid or adjust the recording of expenses incurred by the Company. Without limiting the generality of the foregoing, the Company has never guaranteed any debt or other obligation of any other Person.

(d) Schedule 2.4(d) of the Company Disclosure Schedule accurately lists all indebtedness of the Company for money borrowed (“*Company Debt*”), including, for each item of Company Debt, the agreements governing such Company Debt and the interest rate, maturity date and any assets or properties securing such Company Debt. All Company Debt may be prepaid at the Closing without penalty under the terms of the Contracts governing such Company Debt.

## 2.5 Accounts Receivable.

(a) Schedule 2.5(a) of the Company Disclosure Schedule sets forth in reasonable detail the balance of the Company’s accounts receivable as of January 12, 2018.

(b) Schedule 2.5 (b) of the Company Disclosure Schedule contains a true, correct and complete list of all invoices issued by the Company between November 1, 2017 and January 10, 2018. Such list is derived from and in accordance with the books and records of the Company. All such invoices have been issued in the ordinary course of business consistent with past practice.

(c) The Company has not received any payments under any Assigned Business Agreements for services not yet rendered as of the Agreement Date.

2.6 No Assignment for Benefit of Creditors or Bankruptcy Filing. The Company has not, at any time, (A) made a general assignment for the benefit of creditors, (B) filed, or had filed against it, any bankruptcy petition or similar filing, (C) been convicted of, or pleaded guilty or no contest to, any felony, or (D) taken or been the subject of any action that could reasonably be expected to have an adverse effect on its ability to comply with or perform any of its covenants or obligations under this Agreement or any of the Company Ancillary Agreements.

2.7 Litigation. There is no private or governmental action, suit, proceeding, claim, arbitration, mediation or investigation (each a “*Legal Proceeding*”) pending before any Governmental Entity, or, to the Company’s knowledge, threatened against the Company or any of the Purchased Assets or any of the Company’s directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company). There is no judgment, decree, injunction, rule

or order against the Company, any of the Purchased Assets or to the Company's knowledge any of Company's directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company). To the Company's knowledge, there is no reasonable basis for any Person to assert a claim against the Company, Lender or any of the Purchased Assets based upon: (a) the Company entering into this Agreement or any of the other transactions or agreements contemplated hereby or by the Asset Purchase Agreement; or (b) any claim that the Company has agreed to sell or dispose of the Purchased Assets to any party other than Buyer, whether by way of foreclosure sale, merger, consolidation, sale of assets or otherwise. The Company has no Legal Proceeding pending against any other Person.

2.8 Restrictions on Business Activities. There is no Contract, judgment, injunction, order or decree binding upon the Company that restricts or prohibits, purports to restrict or prohibit, has or would reasonably be expected to have, whether before or after consummation of the Asset Purchase, the effect of prohibiting, restricting or impairing any current business practice of the Company, any acquisition of property by the Company or the conduct or operation of Business or limiting the freedom of Buyer after the Closing to engage in the Business or any line of business, to sell, license or otherwise distribute services or products in any market or geographic area, or to compete with any Person, including any grants by the Company of exclusive rights or exclusive licenses. Other than the Material Contracts or as set forth on Schedule 2.8 of the Company Disclosure Schedule, there are no material Contracts or permits to which the Company is a party that relate to or affect the Purchased Assets.

2.9 Title to Assets. Other than with regard to Intellectual Property, which is addressed in Section 2.13 below, and subject to Section 1.6, the Company has good title to, or valid leasehold interests in, all of the Purchased Assets. The Company is in default under the Loan Documents and the Lender is entitled to dispose of the Collateral pursuant to the Loan Documents and the UCC.

2.10 Compliance with Laws; Governmental Permits.

(a) The Company has complied in all material respects with and is not in material violation of, any Legal Requirement with respect to the ownership or operation of the Business or the Purchased Assets.

(b) The Company has obtained each material federal, state, county, local or foreign governmental consent, business license, permit, grant, or other authorization of a Governmental Entity pursuant to which the Company currently operates or holds any interest in any of the Purchased Assets (all of the foregoing consents, licenses, permits, grants, and other authorizations, collectively, the "*Company Authorizations*"), and all of the Company Authorizations are in full force and effect. The Company has not received any written notice from any Governmental Entity regarding (i) any actual or possible violation of law or any Company Authorization or any failure to comply with any term or requirement of any Company Authorization or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Company Authorization. The Company has materially complied with all of the terms of the Company Authorizations.

2.11 Taxes.

(a) The Company has properly completed and timely filed (taking into account any extension of time within which to file) all Tax Returns with respect to the Purchased Assets required to be filed by it prior to the Closing Date, has timely paid all Taxes with respect to the Purchased Assets required to be paid by it (whether or not shown on a Tax Return), except for Taxes with respect to which adequate reserves for payment have been made in accordance with GAAP, and has no liability for Taxes in excess of the amount so paid or accrued. There is no claim in writing for Taxes being asserted against

the Company that has resulted in an Encumbrance against the Purchased Assets. Except as would not be material or could reasonably be expected to result in an Encumbrance against the Purchased Assets, all Taxes required to be withheld or paid by the Company in connection with amounts paid or owing to any employee of the Company have been duly and timely withheld or paid, and any such withheld Taxes have been either duly and timely paid to the proper Tax Authority or properly set aside in accounts for such purpose and will be duly and timely paid to the proper Tax Authority. There are no Tax liens on or against any of the Purchased Assets, other than for current Taxes not yet due and payable.

(b) No deficiencies for any Tax with respect to the Purchased Assets have been threatened, claimed or proposed in writing or assessed against the Company that have not been withdrawn, settled or paid. No Tax Return of the Company has ever been audited by the IRS or any other Tax Authority, no such audit is in progress and the Company has not been notified in writing of any request for such an audit or other examination and no audit or other examination of the Company is currently being conducted by any Tax Authority. No adjustment relating to any Tax Returns filed by the Company has been proposed in writing by any Tax Authority to the Company (or any representatives thereof).

(c) There is not in effect any waiver by the Company of any statute of limitations with respect to any Taxes with respect to the Purchased Assets or agreement to any extension of time for filing any Tax Return with respect to the Purchased Assets which has not been filed, and the Company has not consented to extend to a date later than the Closing Date the period in which any Tax with respect to the Purchased Assets may be assessed or collected by any Tax Authority.

(d) The Company is not a party to, and does not owe any amount under, any Tax sharing or allocation agreement. The Company has not been a member of an affiliated group filing a consolidated federal income Tax return (other than a group the common parent of which was the Company) and has no Liability for the Taxes of any Person (other than the Company) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign law) as a transferee or successor, by contract or otherwise. No written claim has ever been made 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.

## 2.12 Employee Benefits.

(a) Pension Plans. Neither the Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any Pension Plan which is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code.

(b) Multiemployer Plans. At no time has the Company or any ERISA Affiliate contributed to or been requested to contribute to any Multiemployer Plan. Neither the Company nor any Affiliate has at any time ever maintained, established, sponsored or participated in or contributed to any multiple employer plan or to any plan described in Section 413 of the Code.

(c) No Post Employment Obligations. No Benefit Plan provides, or has any liability to provide, life insurance, medical or other employee benefits to any current or former employee or other service provider upon his or her retirement or termination of employment or service for any reason, except as may be required by COBRA or other statute.

(d) Compliance. The Company is and has been, and all Benefit Plans are and have been maintained and currently are, in material compliance with all legal requirements including, but not limited to, ERISA and the Code.

2.13 Intellectual Property.

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

(i) “*Company Intellectual Property*” means any and all Company Owned Intellectual Property and any and all Company Licensed IP.

(ii) “*Company Licensed IP*” means any and all Third Party Intellectual Property that is licensed to the Company.

(iii) “*Company Owned Intellectual Property*” means any and all Intellectual Property that is owned or purported to be owned by the Company.

(iv) “*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.

(v) “*Company Registered Purchased Intellectual Property*” means the United States, international and foreign: (A) patents and patent applications (including provisional applications); (B) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks; and (C) registered Internet domain names; and (D) registered copyrights and applications for copyright registration; in each case (A)–(D), registered or filed in the name of, the Company that constitute Purchased Intellectual Property.

(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 contained in Company Products.

(vii) “*Intellectual Property*” means (A) Intellectual Property Rights; and (B) Proprietary Information and Technology.

(viii) “*Intellectual Property Rights*” means any and all of the following and all rights in, arising out of, or associated therewith, throughout the world: (A) patents, utility models, and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and equivalent or similar rights in inventions and discoveries anywhere in the world, including invention disclosures; (B) common law and statutory rights associated with trade secrets, confidential and proprietary information, and know how; (C) industrial designs and any registrations and applications therefor; (D) trade names, logos, trade dress, trademarks and service marks, trademark and service mark registrations, trademark and service mark applications, and any and all goodwill associated with and symbolized by the foregoing items; (E) Internet domain name registrations; (F) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto; (G) mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology; (H) moral and economic rights of authors and inventors, however denominated, and any similar or equivalent rights to any of the foregoing.

(ix) “*Licensed IP Agreements*” means any Contract governing any Company Licensed IP to which the Company is a party or bound by.

(x) *“Open Source Materials”* means software or other material that is distributed as “free software”, “open source software” or under 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) and the Apache License).

(xi) *“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.

(xii) *“Proprietary Information and Technology”* means any and all of the following: works of authorship, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, assemblers, applets, compilers, user interfaces, application programming interfaces, protocols, architectures, documentation, annotations, comments, designs, files, records, schematics, test methodologies, test vectors, emulation and simulation tools and reports, hardware development tools, models, tooling, prototypes, breadboards and other devices, data, data structures, databases, data compilations and collections, inventions (whether or not patentable), invention disclosures, discoveries, improvements, technology, proprietary and confidential ideas and information, know-how and information maintained as trade secrets, tools, concepts, techniques, methods, processes, formulae, patterns, algorithms and specifications, customer lists and supplier lists and any and all instantiations or embodiments of the foregoing or any Intellectual Property Rights in any form and embodied in any media; provided, however, that “Proprietary Information and Technology” and any subset thereof does not include Personal Data.

(xiii) *“Purchased Intellectual Property Agreements”* means any Contract governing any Company Intellectual Property to which the Company is a party or bound by, except for Contracts for Company Licensed IP 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 \$10,000.

(xiv) *“Third Party Intellectual Property”* means any and all Intellectual Property owned by a third party.

(b) Status. The Company has full title and ownership of, or is duly licensed under or otherwise authorized to use, all Intellectual Property necessary to enable it to carry on the Business, free and clear of any Encumbrances, and without any conflict with or infringement upon the rights of others. The Purchased Intellectual Property and the Company’s rights under the Licensed IP Agreements collectively constitute all of the intangible assets, intangible properties, rights and Intellectual Property necessary for Buyer’s conduct of, or that are used in or held for use for, the Business without the need for Buyer to acquire or license any other material intangible asset, intangible property or Intellectual Property Right (subject to Section 1.6). The Company has not transferred ownership of, or agreed to transfer ownership of, or granted any exclusive licenses to, or agreed to grant any exclusive licenses to any Purchased Intellectual Property to any third party. No third party has any ownership right, title, interest, claim in or lien on any of the Purchased Intellectual Property except pursuant to the Purchased Intellectual Property Agreements.

(c) Company Registered Purchased Intellectual Property. Schedule 2.13(c) of the Company Disclosure Schedule lists: all Company Registered Purchased Intellectual Property; 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. Each item of Company Registered Purchased Intellectual Property is: (a) to the knowledge of the Company, valid and subsisting (or in the case of applications, applied for), and (b) all registration, maintenance and renewal fees currently due in connection with such Company Registered Purchased Intellectual Property have been paid and all documents, recordations and certificates in connection with such Company Registered Purchased Intellectual Property currently required to be filed have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Company Registered Purchased Intellectual Property and recording the Company's ownership interests therein.

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

(e) Founders. All rights in, to and under all Purchased Intellectual Property 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 or Buyer with such cooperation as may reasonably be required to complete and prosecute all appropriate United States and foreign patent and copyright filings related thereto.

(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 Purchased Intellectual Property for the Company (each an "*Author*"), unencumbered and unrestricted exclusive ownership of, all of the Authors' Intellectual Property in such contribution and has obtained the waiver of all non-assignable rights to the maximum extent permitted by applicable law. No Author has retained any rights, licenses, claims or interest whatsoever with respect to any Purchased Intellectual Property developed by the Author for the Company (other than rights or licenses to use the Purchased Intellectual Property solely for the benefit of the Company), except to the extent that any such rights are not assignable under applicable law. Without limiting the foregoing, the Company has obtained written and, to the Company's knowledge enforceable proprietary information and invention disclosure and Intellectual Property assignments from all current and former Authors. The Company has provided to Buyer copies of all such forms currently and historically used by the Company.

(g) No Violation. To the Company's knowledge, no current or former employee, consultant, advisor or independent contractor of the Company that was involved in the creation of the Purchased Intellectual Property: (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 incorporated into the Purchased Intellectual Property 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 Purchased Intellectual Property.

(h) Confidential Information. The Company has taken commercially reasonable steps to protect and preserve the confidentiality of all confidential or non-public information of the Company (including, without limitation, trade secrets) or provided by any third party to the Company with respect to the Purchased Assets ("Confidential Information"). All current and former employees and contractors of the Company and any third party having access to Confidential Information are either bound by fiduciary, professional or other binding obligations to protect that Confidential Information or have executed and delivered to the Company a written and, to the Company's knowledge, legally binding agreement protecting and preserving the confidentiality of such Confidential Information. The Company has implemented and maintains a reasonable data security plan consistent with industry practices of companies offering similar services. To the knowledge of the Company, 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. To the knowledge of the Company, there is no unauthorized use, unauthorized disclosure, infringement or misappropriation of any Purchased Intellectual Property, by any third party. The Company has not brought any Legal Proceeding for infringement or misappropriation of any Purchased Intellectual Property. Neither the Company nor the Business is infringing, misappropriating or violating, or has infringed, misappropriated or violated, the Intellectual Property of any third party. The Company has not been sued in any Legal Proceeding or received any written communications (including any third party reports by users) alleging that the Company has infringed, misappropriated, or violated any Intellectual Property of any other Person or entity. No Purchased 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 Purchased Intellectual Property.

(j) Licenses; Agreements. The Company has not granted any options, licenses or agreements of any kind relating to any Purchased Intellectual Property outside of normal nonexclusive end use terms of service or other grants of rights entered into by purchasers of the Company Products in the ordinary course (copies of which have been provided to Buyer's counsel) whether granted directly to end users or through indirect distribution channels) (collectively, "Standard End User Contracts") or pursuant to Non-Scheduled Out-Licenses. The Company is not bound by or a party to any option, license or agreement of any kind with respect to any of the Purchased Intellectual Property other than Standard End User Contracts. 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 Products or Purchased Intellectual Property or any other property or rights.

(k) Other Purchased Intellectual Property Agreements. With respect to the Purchased Intellectual Property Agreements other than Non-Scheduled In-Licenses or Non-Scheduled Out-Licenses:

(i) Except with respect to Purchased Intellectual Property Agreements set forth on Schedule 2.2(b) of the Company Disclosure Schedule, (A) 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 Purchased Intellectual Property Agreement and (B) the consummation of the Asset Purchase will not result in the modification, cancellation, termination, suspension of, or acceleration of any payments, rights, obligations or remedies with respect to any material Purchased Intellectual Property Agreements, or give any non-Company party to any Purchased Intellectual Property Agreement the right to do any of the foregoing;

(ii) Except with respect to Purchased Intellectual Property Agreements set forth on Schedule 2.2(b) of the Company Disclosure Schedule, and subject to the filing of appropriate instruments of assignment and transfer and payment of related fees, at the Closing, Buyer will be permitted to exercise all of the Company's rights under the Purchased Intellectual Property Agreements to the same extent the Company would have been able to had the Asset Purchase not occurred and without 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 knowledge of the Company, there are no disputes regarding the scope of any Purchased Intellectual Property Agreements, or performance under any Purchased Intellectual Property Agreements including with respect to any payments to be made or received by the Company thereunder;

(iv) No Purchased 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 Purchased Intellectual Property Agreements grants any third party exclusive rights to or under any Purchased Intellectual Property;

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

(vii) The Company has obtained written 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 that are, to the knowledge of the Company, valid; and

(viii) No third party that has provided Intellectual Property 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 other than pursuant to clauses granting rights to feedback provided by the Company to the third party.

(l) Neither this Agreement nor the Transactions will result in: (i) Buyer or any of its Affiliates granting to any third party any right to or with respect to any Purchased Intellectual Property, (ii) with respect to the Purchased Intellectual Property Agreements, Buyer 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) with respect to Intellectual Property, Buyer being obligated to pay any royalties or other material amounts to any third party in excess of those payable by any of them, respectively, in the absence of this Agreement or the Transactions.

(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 will result in a release from escrow or other delivery to a third party of any Company Source Code.

(n) Open Source Software. Schedule 2.13(n) of the Company Disclosure Schedule identifies all Open Source Materials used in any Company Products, describes the manner in which such Open Source Materials were used (such description shall include whether (and, if so, how) the Open Source Materials were modified and/or distributed by the Company) and identifies the licenses under which such Open Source Materials were used. The Company is in compliance with the terms and conditions of all licenses for such Open Source Materials. The Company has not (i) incorporated Open Source Materials into, or combined Open Source Materials with, the Purchased Intellectual Property or Company Products; (ii) distributed Open Source Materials in conjunction with any Purchased 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 Purchased Intellectual Property or grant, or purport to grant, to any third party, any rights or immunities under any Purchased 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 complied with all applicable laws, regulations and its respective internal privacy policies governing the Company's use, collection, storage, disclosure, and transfer of any Personal Data collected by the Company or by third parties having authorized access to the records of the Company. The execution, delivery and performance of this Agreement, will comply with all applicable laws and regulations relating to privacy and with the Company's privacy policies. The Company has not received any complaint regarding the Company's collection, use or disclosure of Personal Data.

(p) Personal Data. The Company has implemented and maintains reasonable security measures designed to address internal and external risks to the security of Personal Data within the Company's possession and control, including reasonable administrative, electronic and physical safeguards to control those risks, and such measures include notification procedures in compliance with applicable Legal Requirements in the case of any breach of security compromising Personal Data. To the knowledge of the Company, except as would not be reasonably expected to result in material liability to the Company there has been no unauthorized acquisition of or access to any such Personal Data.

## 2.14 Material Contracts.

(a) Schedules 2.14(a)(i) through 2.14(a)(xviii) of the Company Disclosure Schedule set forth a list of each of the following Contracts to which the Company is a party as of the Agreement Date and that has not expired or been terminated as of the Agreement Date (the "**Material Contracts**"):

(i) except for Contracts relating to the employment of any Company employees, any Contract providing for payments by or to the Company in 12 months prior to the Agreement Date in an aggregate amount of \$25,000 or more;

(ii) any dealer, distributor or similar agreement, or any Contract providing for the grant of rights to reproduce, license, market or sell Company Products to any other Person (other than pursuant to Standard End User Contracts) 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;

(iii) (i) any joint venture Contract, (ii) any Contract that involves a sharing of revenues, profits, cash flows, expenses or losses with other Persons or (iii) any Contract that involves the payment of royalties to another Person;

(iv) any Contract for or relating to the employment or service of any director, officer, employee or consultant or any other type of Contract with any of its officers, employees or consultants, as the case may be, where such Contract provides for severance or change of control benefits;

(v) 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 the Company Products or Purchased Intellectual Property, or containing any non-competition covenants or other restrictions relating to the Company Products or Purchased Assets; 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 with respect to the Company Products or Purchased Intellectual Property, or to make use of any Purchased Intellectual Property;

(vi) other than Non-Scheduled In-Licenses all licenses, sublicenses and other Contracts to which the Company is a party and pursuant to which the Company acquired or is authorized to use any Third Party Intellectual Property used in the development, marketing or licensing of the Company Products;

(vii) other than Non-Scheduled Out-Licenses, any license, sublicense or other Contract to which the Company is a party and pursuant to which any Person is authorized to use any Purchased Intellectual Property;

(viii) other than Standard End User Contracts, any license, sublicense or other Contract pursuant to which the Company has agreed to any restriction on the right of the Company to use or enforce any Purchased Intellectual Property or pursuant to which the Company agrees to encumber, transfer or sell rights in or with respect to any Purchased Intellectual Property;

(ix) 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;

(x) any Contract providing for the development of any software, technology or Intellectual Property Rights, independently or jointly, either by or 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 standard forms have been provided to Buyer's counsel);

(xi) any confidentiality, secrecy or non-disclosure Contract other than any such Contract entered into by the Company in the ordinary course of business consistent with past practice;

(xii) other than Non-Scheduled Out-Licenses, any Contract to license or authorize any third party to manufacture or reproduce any of the Purchased Assets;

(xiii) other than Standard End User Contracts, any agreement containing any support, maintenance or service obligation or cost on the part of the Company;

(xiv) any settlement agreement;

(xv) other than Non-Scheduled Out-Licenses and Non-Scheduled In-Licenses, 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 Asset Purchase or other transactions contemplated hereunder, either alone or in combination with any other event; and

(xvi) any Contract with any labor union or any collective bargaining agreement with its employees;

(xvii) any Contract with any Governmental Entity, any Company Authorization, or any Contract with a government prime contractor, or higher-tier government subcontractor, including any indefinite delivery/indefinite quantity Contract, firm-fixed-price Contract, schedule Contract, blanket purchase agreement, or task or delivery order with any Governmental Entity (each a "*Government Contract*"); and

(xviii) any other Contract or obligation not listed in clauses (i) through (xvii) that is material to the Company, the Business or the Purchased Assets.

(b) All Material Contracts are in written form. The Company has materially performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not alleged to be in default in respect of, any Material Contract. Each of the Material Contracts is in full force and effect, subject only to the effect, if any, of applicable bankruptcy and other similar laws affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies. There exists no default or event of default or event, occurrence, condition or act, with respect to the Company or to the Company's knowledge, with respect to any other contracting party, which, with the giving of notice, the lapse of time or the happening of any other event or condition, would reasonably be expected to (i) become a default or event of default under any Material Contract or (ii) give any third party (A) the right to declare a default or exercise any remedy under any Material Contract, (B) the right to a rebate, chargeback, refund, credit, penalty or change in delivery schedule under any Material Contract, (C) the right to accelerate the maturity or performance of any obligation of the Company under any Material Contract, or (D) the right to cancel, terminate or modify any Material Contract (other than pursuant to Material Contracts that allow for termination for convenience by a party). The Company has not received any notice or other communication regarding any actual or possible violation or breach of, default under, or intention to cancel, terminate, modify or not renew any Material Contract. The Company has no Liability for renegotiation of Government Contracts. Correct and complete copies of all Material Contracts have been provided to Buyer prior to the Agreement Date.

2.15 No Brokers. Except for Navidar Group (the "*Company Broker*"), the Company's financial advisor in the Transactions, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Company or its Affiliates.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to the Company as follows:

3.1 Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer is not in violation of any of the provisions of its certificate of incorporation or bylaws.

3.2 Authority: Noncontravention.

(a) Buyer has all requisite corporate power and authority to enter into this Agreement and to consummate the Transactions. The execution and delivery of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer. This Agreement is the valid and binding obligation of Buyer enforceable 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.

(b) The execution and delivery by Buyer of this Agreement do not, and the consummation of the transactions contemplated hereby and thereby will not, conflict with, or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person pursuant to, (i) any provision of the certificate of incorporation or bylaws of Buyer, in each case as amended to date, or (ii) any Legal Requirements (except as would not reasonably be expected to have a material adverse effect on the Buyer).

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby and thereby that would reasonably be expected to adversely affect the ability of Buyer to consummate the Asset Purchase or any of the other transactions contemplated hereby.

3.3 Litigation. There are no Legal Proceedings pending or, to the knowledge of Buyer, threatened against Buyer that seek to restrain or enjoin the consummation of the transactions contemplated hereby.

3.4 Sufficient Funds. Buyer shall have sufficient funds to enable Buyer to pay the Contingent Payment, if and when such payments become due.

3.5 Independent Investigation: Non-Reliance. Buyer acknowledges (for itself and on behalf of its Affiliates and the representatives of any of the foregoing) that it has conducted and completed its own investigation, analysis and evaluation of the Company, that it has made all such reviews and inspections of the financial condition, business, results of operations, properties, assets and prospects of the Company as it has deemed necessary or appropriate, that it has had the opportunity to request all information it has deemed relevant to the foregoing from the Company and has received responses it deems adequate and sufficient to all such requests for information. Buyer acknowledges and agrees (for itself and on behalf of its Affiliates and the representatives of any of the foregoing) that, except for the representations and warranties expressly set forth in Article II, (a) the Company (or any other Person) does not make, and has not made, any representation or warranty relating to the Company or the Business in connection with this Agreement or the transactions contemplated hereby, and neither Buyer nor any of its Affiliates or the representatives of any of the foregoing is relying on any representation or warranty except for those expressly set forth in Article II.

ARTICLE IV  
[RESERVED]

ARTICLE V  
ADDITIONAL AGREEMENTS

5.1 Conduct of Business. From the Agreement Date until the Closing Date (except as otherwise may be agreed to by Buyer), the Company shall conduct the Business in the ordinary course consistent with past practice and use its best efforts to (i) preserve intact the present business organization of the Business, (ii) maintain in effect all licenses, permits, consents, franchises, approvals and authorizations of the Business, (iii) keep available the services of the directors, officers and key employees of the Business, and (iv) maintain satisfactory relationships with the customers, lenders, suppliers and others having material business relationships of the Business.

5.2 Employees.

(a) The Company shall pay to its employees all Liability for accrued wages and accrued vacation, sick leave or similar benefits with respect to such employees attributable to periods of employment or service of such employee with the Company up to and including the date of termination of such employees, and shall make such payment within the statutory time period therefor but in no event later than 10 Business Days after such employee's employment with the Company is terminated. The Company agrees that each employee who receives an offer from Buyer (collectively, the "*Offered Employees*") shall remain as an employee of the Company until the later of (i) January 19, 2018, if such employee does not accept the offer from Buyer on or before such date and (ii) January 30, 2018, if such employee accepts the offer from Buyer (the employees who accept such offer, the "*Transferred Employees*"). The Company shall terminate the Offered Employees who are not Transferred Employees as of January 19, 2018 ("*Terminated Offered Employees*"). The Purchase Price includes an amount equal to the payments made or to be made by the Company to the Offered Employees for the period from the Closing Date to January 30, 2018, inclusive, and the Company shall use such portion of the Purchase Price to satisfy its employment-related obligations to such employees through any applicable termination date. As soon as practicable following January 19, 2018 and in no event later than January 26, 2018, the Company and Buyer shall in good faith determine the cost relating to the Terminated Offered Employees for the period from January 20, 2018 to January 30, 2018, inclusive, which amount was prepaid by Buyer at Closing, and the Company shall remit such amount to Buyer on or prior to January 31, 2018. Following the Closing, to the extent required by any applicable Legal Requirements, Buyer shall be responsible for administering COBRA matters with respect to former employees of the Company.

(b) The Company hereby consents to the hiring of all of its employees by Buyer as of the Closing and waives, with respect to the employment or engagement by Buyer of such employees, any claims or rights the Company may have against Buyer or any such employee under any non-competition, confidentiality or employment agreement or consulting agreement to the extent such employee will perform services for Buyer.

(c) To the extent Buyer hires any former employee of the Company that has terminated his or her employment with the Company prior to the Agreement Date or prior to the Closing, the Company hereby waives, with respect to the employment or engagement by Buyer of such employee, any claims or rights the Company may have against Buyer or such employee under any non-competition, confidentiality or employment agreement or consulting agreement to the extent such employee will perform services to Buyer.

(d) The Company shall be responsible for any withholding and/or employment Taxes with respect to any of the Company's employees, as well as each former employee or consultant of the Company who is not currently an employee, that accrue or become payable during the period of such person's employment or service with the Company up to and including the date of termination of such



employees, or arise out of the termination of such person's employment or service with the Company on or before the Closing Date. For the avoidance of doubt, all Transferred Employees shall be considered to be terminated by the Company as of January 30, 2018. The Purchase Price includes an amount equal to all payments relating to withholding and/or employment Taxes with respect to any of the Transferred Employees for the period from the Closing Date to January 30, 2018, inclusive. At the Company's election, Buyer and the Company shall use the alternate procedure set forth in Rev. Proc. 2004-53 with respect to any employee hired by the Buyer; if the alternate procedure is so elected, the Company shall furnish Buyer with such information as Buyer may reasonably request in connection with preparing employment Tax returns for the calendar year that includes the Closing Date. Except as set forth in the preceding sentence, the Company shall be responsible for filing all employment Tax returns with respect to current and former employees and consultants of the Company attributable to periods of employment or service with the Company.

(e) Except as otherwise provided in this Section 5.2 or required by any applicable Legal Requirements, Buyer shall not assume any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each "employee benefit plan" within the meaning of Section 3(3) of ERISA which is or has been maintained, contributed to, or required to be contributed to, by the Company or any of its ERISA Affiliates for the benefit of any employee of the Company or with respect to which the Company or any of its ERISA Affiliates have or may have any liability or obligation (each, a "*Benefit Plan*"), and the Company shall retain responsibility for all Liabilities, claims, rights and payments under each Benefit Plan whether fixed, contingent or absolute, matured or unmatured, accrued or unaccrued, known or unknown, including all costs and expenses relating thereto, and including those debts, liabilities and obligations arising under law, rule, regulation, permits, action or proceeding before any court or regulatory agency or administrative agency, order or consent decree or any award of any arbitrator of any kind, and those arising under contract, commitment or undertaking (the "*Benefits Liabilities*").

5.3 Access to Information. From the Agreement Date until the Closing Date, the Company shall, with reasonable prior written notice from Buyer, (i) give Buyer, its counsel and other authorized representatives reasonable access during normal business hours to the offices, properties, books and records of the Company relating to the Business, (ii) furnish to Buyer, its counsel and other authorized representatives such financial and operating data and other information relating to the Business as such Persons may reasonably request and (iii) instruct the employees, counsel and financial advisor of the Company to cooperate with Buyer in its investigation of the Business. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company hereunder. Buyer shall be required to receive consent of the Company's chief executive officer or chief financial officer prior to engaging any current employees or consultants of the Company prior to the Closing.

5.4 Confidentiality. From and at all times after the Closing, the Company covenants and agrees with Buyer that, all confidential and/or proprietary information relating to the Purchased Assets, including any trade secrets, will be held in strict confidence by the Company and will not be disclosed by the Company, except (i) to the extent such information is or becomes a matter of public knowledge through no fault of the Company, or (ii) as required by any Governmental Entity.

5.5 Public Disclosure. The Company and its Affiliates shall not issue any press release or other public statement relating to the terms of this Agreement or the Transactions or use Buyer's name or refer to Buyer directly or indirectly in connection with Buyer'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 the Buyer, except as reasonably necessary for the Company to obtain the consents and approvals of third parties contemplated by this Agreement. Prior to contacting or responding to inquiries from any contract party, customer or prospective customer of the Company, the Company and Buyer will develop agreed forms of communications, including a letter to customers, content for the Company's website (at all times as of and following the Agreement Date), and an agreed response to inquiries from potential customers of the Company, and the Company shall not alter, amend or supplement such agreed communications without the prior approval of Buyer. Notwithstanding anything herein, Buyer and the Company shall mutually agree on the content of an initial blog post by the Company announcing the transaction and thereafter Buyer may make such other public statements regarding this Agreement or the Transactions as Buyer may determine is reasonably appropriate.

5.6 Consents. The Company shall use all reasonable efforts (but without the payment of money by the Company) to obtain as promptly as possible from the Agreement Date, and deliver to Buyer, all consents, waivers and approvals from third parties necessary to effect the assignment and transfer to Buyer of good and marketable title to all of the Purchased Assets free and clear of all Encumbrances.

5.7 Expenses. Other than as specifically set forth herein, whether or not the Asset Purchase is consummated, all costs and expenses incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such expense.

5.8 Further Assurances. On the terms and subject to the conditions set forth in this Agreement, each of the parties hereto shall use all reasonable efforts, and shall cooperate with each other party hereto, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, reasonably appropriate or desirable to consummate and make effective, in the most expeditious manner practicable, the Transactions, including the satisfaction of the respective conditions set forth in ARTICLE VI. Each party hereto, at the reasonable request of the other party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary for effecting completely the consummation of the Asset Purchase and the Transactions. The Company shall cooperate with Buyer to determine all actions that are required to be taken by the Company within 180 days of the Agreement Date with respect to the Company Registered Purchased Intellectual Property in order to avoid prejudice to, impairment or abandonment of such Purchased Intellectual Property Rights.

5.9 Payment of Taxes. The Company shall, to the extent that failure to do so would materially adversely affect or result in any Encumbrance on the Purchased Assets, (a) continue to file all of the Company's Tax Returns within the time period for filing, and such Tax Returns shall be true, correct and complete in all material respects, and (b) pay when due any and all Taxes attributable to or levied or imposed upon the Purchased Assets for periods (or portions thereof) through and including the Closing Date whether or not such payment is required to be paid after the Closing Date. Buyer and the Company shall each be responsible for preparing and filing its own IRS Form 8594 and any other Tax returns that are required to be filed under any corresponding or similar requirements or applicable Legal Requirements with respect to Tax.

5.10 Cessation of Operations; Dissolution of the Company. The Company shall cease operating the Business immediately following the Closing and shall use commercially reasonable efforts to adopt a plan of liquidation substantially in the form attached hereto as Exhibit B (the "*Plan of Liquidation*") that complies with Section 281(b) of the Delaware General Corporations Law. The Plan of Liquidation shall provide for the use of the Excess Funds and any other funds realized by the Company through the sale and collection of Excluded Assets pursuant to the Plan of Liquidation, for the prompt payment or resolution of known creditor claims, and winding up of the Company's affairs. After

the Closing, the Company may not, except as contemplated by the Plan of Liquidation, (a) repurchase or redeem any Company capital stock, (b) make any distribution to its stockholders or (c) dissolve or liquidate, in each case unless the Company has satisfied any creditor claims for which Buyer could become liable, including as a result of any failure by either Buyer or the Company to comply with the requirements of any applicable bulk sales or transfer laws. In connection with the distribution of any Contingent Payment as contemplated by the Plan of Liquidation (whether distributed by the Company to Holder, or paid directly to Holder pursuant to the written assignment of such right to the Contingent Payment by the Company to Holder or the Plan of Liquidation), each Holder acknowledges that such Contingent Payment are subject to setoff pursuant to the indemnification provisions of Article VIII. Each Holder hereby approves the Plan of Liquidation and agrees to subordinate its right to payment to the other unsecured creditors of the Company as contemplated by the Plan of Liquidation.

5.11 Release and Wavier by the Company and Holders. Effective as of the Closing Date, each of the Company and the Holders, for itself and if applicable, on behalf of its directors and officers, representatives, agents, estates, heirs, successors and assigns (the "*Releasing Parties*"), hereby irrevocably, unconditionally and forever acquits, releases, waives and discharges, and further covenants and agrees that they will not assert any claims against Buyer or any of its directors and officers, equityholders, representatives, agents, estates, successors and assigns, or against Lender and any of its directors, officers, equityholders, representatives, agents, estates, successors and assigns (the "*Released Parties*"), arising from or related to any and all past, present and future debts, losses, costs, bonds, suits, actions, causes of action, liabilities, contributions, attorneys' fees, interest, damages, punitive damages, expenses, claims, potential claims, counterclaims, cross-claims, or demands, in law or in equity, asserted or unasserted, express or implied, known or unknown, matured or unmatured, contingent or vested, liquidated or unliquidated, of any kind or nature or description whatsoever, that any of the Releasing Parties had, presently has or may hereafter have or claim or assert to have against any of the Released Parties, that in any way arise from or out of, are based upon or relate to (i) the negotiation of this Agreement, (ii) the employment by Buyer of, or the offer of employment by Buyer to any employee of the Company, (iii) the negotiation of the Asset Purchase Agreement and the completion of the Asset Purchase, including without limitation that the Asset Purchase constitutes a fraudulent or avoidable transfer or that any aspect of the Asset Purchase was commercially unreasonable under the UCC ; (iii) the wind-up, liquidation, dissolution or cessation of the Company's business operations or the sale or license of the Company's assets, including the termination of any Company employees or other service providers, and (iv) the provision of any services provided by the Company's employees or consultants to Buyer (including the use of any intellectual property developed by such employees during their employment with the Company, or otherwise developed or owned by the Company) ((i) through (iv), collectively, the "*Released Claims*"). The Releasing Parties hereby further covenant not to sue or otherwise seek to enforce or assert any rights against Buyer or any of the Released Parties. Notwithstanding anything in this Section 5.11, the foregoing release in this Section 5.11 shall not cover, and the Released Claims shall not apply to or include, the rights of the Company or any Holder with respect to the Buyer under this Agreement, or as it relates to the Holders' rights to receive payment from the Company for the Subordinated Debt from the proceeds of the Asset Purchase as contemplated by the Plan of Liquidation and the Contingent Payment.

5.12 Validity of Debt and Lien; Commercially Reasonable Disposition; Satisfaction of Standards. The Company represents and warrants to the Buyer that each of the Loan Documents to which the Company is a party has been duly and validly executed and delivered by the Company, and constitutes a legal, 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. The Loan Documents grant to the Lender a valid security interest in the Collateral pursuant to Article 9 of UCC which validly encumbers the Purchased Assets.

Pursuant to the Loan Documents, the Company is indebted to Lender for money borrowed and for expenses in the amount of \$2,123,338.70 without defense, counterclaim or setoff. The Company is in default under the Loan Documents and the Lender is entitled to dispose of the Collateral pursuant to the Loan Documents and the UCC. The Company has received the Notification of Disposition of Collateral sent by Lender on January 5, 2018 and on January 11, 2018, and has waived any and all notice period relating to the Notification of Disposition of Collateral sent by Lender on January 11, 2018. The Company has received no communication from any other person other than the Lender asserting a present claim of Lien against the Purchased Assets. The Company agrees that it is not aware (having made inquiry only of the Company's officers) of any basis for it to conclude that the sale, assignment and transfer of the Purchased Assets pursuant to the Asset Purchase Agreement, and all aspects thereof, does not constitute a commercially reasonable disposition within the meaning of Section 9-610 of the UCC and that the sale of the Purchased Assets for the Purchase Price (including the Contingent Payment) is not in full compliance with the UCC.

5.13 Preservation of Records; Post-Closing Access to Information. Each of the Company and Buyer agrees that it will preserve and keep the records, whether created before or after the Closing Date, held by them or their Affiliates relating to the Business, the Purchased Assets, the Assumed Liabilities and the Contingent Payment and the "Giving Days" to which the Contingent Payment relate until three (3) years after the Closing Date except, in the case of Tax matters, until thirty (30) days following the expiration of the period of any applicable statute of limitations and shall make such records available to the other party as may be reasonably requested by such other party in connection with, among other things, the Contingent Payment and the "Giving Days" to which the Contingent Payment relate, any insurance claims by, actions or Tax audits against or investigations by any Governmental Authority of the Business.

## ARTICLE VI CONDITIONS AND CLOSING DELIVERIES

### 6.1 Conditions to Obligations of Buyer.

(a) Conditions. The obligations of Buyer hereunder are subject to the fulfillment or satisfaction, on and as of, or concurrently with the Closing, of each of the following conditions (any one or more of which may be waived by Buyer):

(i) Accuracy of Representations and Warranties. (i) The representations and warranties of the Company set forth in this Agreement shall be true and correct in all respects as of the Closing.

(ii) Covenants. The Company shall have performed and complied with all of its covenants and obligations contained in this Agreement (to the extent that such covenants and obligations require performance by the Company on or before the Closing).

(iii) Compliance with Law; No Legal Restraints. There shall not be issued, enacted or adopted, or threatened by any Governmental Entity, any order, decree, injunction, legislative enactment, statute, regulation, or action, or any judgment or ruling that prohibits or imposes limitations on: (a) the Transactions or (b) Buyer's right to own, retain, use or operate any of the Purchased Assets on or after the Closing or seeking a disposition or divestiture of any of the Purchased Assets.

(iv) No Material Adverse Effect. No Effect, individually or taken together with all other Effects, is or would reasonably likely to be or become, materially adverse to the condition (financial or otherwise), assets (including intangible assets), liabilities, business or prospects of the

Company, or (ii) adversely affects, or would reasonably be likely to adversely affect, the Company's ability to perform or comply with the material covenants, agreements or obligations herein or to consummate the Transactions.

(b) Receipt of Company Closing Deliverables. At the Closing (or before as set forth below), the Company shall deliver:

(i) A certificate, dated as of the Closing Date and executed on behalf of the Company by its Secretary, certifying the allocation of Contingent Payment to be distributed to the Holders in connection with the Plan of Liquidation.

(ii) Duly executed copies of this Agreement, the Seller Ancillary Agreement and each Company Ancillary Agreement;

(iii) A copy of the current Certificate of Incorporation and Bylaws of the Company and all resolutions adopted by each of the board of directors of the Company in connection with this Agreement or the Transactions, in each case certified by the Secretary of the Company, including any resolutions approving parachute payments;

(iv) Written evidence, in form and substance satisfactory to Buyer, of the termination of the Company's obligations with respect to the Subordinated Debt from the Holders effective as of Closing (other than for such rights to the proceeds of the Purchase Price and Contingent Payment as set forth herein);

(v) A certificate, dated as of the Closing Date, executed on behalf of the Company by the Chief Executive Officer or Chief Financial Officer of the Company to the effect that each of the conditions set forth in Section 6.1(a)(i) and (ii) has been satisfied;

(vi) A certificate from the Delaware Secretary of State, and each other State or other jurisdiction in which the Company is qualified to do business as a foreign corporation dated within three Business Days prior to the Closing Date certifying that the Company is in good standing;

(vii) An executed payoff letter, in form and substance satisfactory to Buyer, from each of the Company's Broker and Wilson Sonsini Goodrich & Rosati, together with acknowledgement and receipt of payment in full of all expenses and payments due related to the Asset Sale and the Transactions (subject to the consummation of the Closing);

(viii) at least one (1) day prior to the Closing, the Closing Deferred Revenue Certificate;

(ix) at least one (1) day prior to the Closing, the Closing Accounts Payable Certificate; and

(x) Executed releases, in form and substance satisfactory to Buyer, from each employee or other services provider of the Company who is receiving any change of control bonus or severance payment from the Company in connection with the Closing.

## 6.2 Conditions to the Obligations of the Company.

(a) Conditions. The obligations of the Company hereunder are subject to the fulfillment or satisfaction, on and as of, or concurrently with the Closing, of each of the following conditions (any one or more of which may be waived by the Company):

(i) Accuracy of Representations and Warranties. The representations and warranties of Buyer set forth in this Agreement that shall be true and correct in all respects.

(ii) Covenants. Buyer shall have performed and complied in all material respects with all of its covenants and obligations contained in this Agreement (to the extent that such covenants and obligations require performance by Buyer on or before the Closing).

(iii) Compliance with Law; No Legal Restraints. There shall not be issued, enacted or adopted, or threatened in writing by any Governmental Entity, any order, decree, injunction, legislative enactment, statute, regulation, or action, or any judgment or ruling that prohibits or imposes material limitations on the Transactions.

(iv) Release by Square 1 Bank. Square 1 Bank shall have released the Company from all obligations with respect to the Square 1 Debt.

(b) Receipt of Buyer Closing Deliverables. At the Closing, Buyer shall deliver:

(i) Duly executed copies of this Agreement; and

(ii) A certificate from an officer of Buyer certifying that the Asset Purchase has been approved by the board of directors and stockholders of Buyer.

## ARTICLE VII TERMINATION

7.1 Termination. This Agreement may be terminated at any time before the Closing:

(a) by the mutual written consent of Buyer and the Company;

(b) by either Buyer or the Company, if the conditions to its obligations to consummate the Transactions have not been satisfied or waived, and the Closing has not occurred, on or before January 19, 2018;

(c) by Buyer if there has been a material breach by the Company of any representations and warranty, covenant or agreement contained herein, or by the Company if there has been a material breach by Buyer of any representations and warranty, covenant or agreement contained herein; or

(d) by either Buyer or the Company, if any permanent injunction or other order of a court or other competent authority preventing the consummation of the Transactions becomes final and nonappealable.

7.2 Effect of Termination. If this Agreement is terminated as provided in Section 7.1, this Agreement shall be of no further force or effect; provided, however, that (i) Section 5.6 (Confidentiality) and Section 5.7 (Public Disclosure), this Section 7.2 (Effect of Termination) and Article IX (General Provisions) shall survive the termination of this Agreement and shall remain in full force and effect, and

(ii) the termination of this Agreement shall not relieve any party from any Liability for any willful breach of this Agreement.

## ARTICLE VIII INDEMNIFICATION

8.1 Indemnification. Subject to the limitations set forth in this ARTICLE VIII, from and after the Closing the Company and the Holders, severally and not jointly, shall indemnify and hold harmless Buyer and its officers, directors, agents and employees, and each person, if any, who controls or may control Buyer within the meaning of the Securities Act (each of the foregoing being referred to individually as an “*Indemnified Person*” and collectively as “*Indemnified Persons*”) from and against any and all losses, liabilities, damages, fees, claims, costs and expenses, including settlement costs and costs of investigation and defense and reasonable fees and expenses of lawyers, experts and other professionals (collectively, “*Indemnifiable Damages*”) directly or indirectly, whether or not due to a third-party claim, arising out of, resulting from or in connection with (a) any failure of any representation or warranty made by the Company in this Agreement as modified by the Company Disclosure Schedule (including any exhibit or schedule to the Company Disclosure Schedule) to be true and correct, (b) any failure of any certification, representation or warranty made by the Company in any Company Ancillary Agreement or any other certificate, document or instrument delivered to Buyer pursuant to any provision of this Agreement to be true and correct as of the date such Company Ancillary Agreement, certificate, document or instrument is delivered to Buyer, (c) any breach of or default in connection with any of the covenants or agreements made by the Company or any Holder in this Agreement (including any exhibit or schedule to this Agreement), (d) any Excluded Liabilities (including without limitation any fees and expenses incurred by the Company in connection with this Agreement and the transactions contemplated hereby), (e) any Liabilities relating to any claim against Buyer brought by any equityholder of the Company relating to this Agreement, the Transactions or the transactions contemplated by the Asset Purchase Agreement and the Company Ancillary Agreements, (f) any and all Liabilities of the Company now or hereafter arising relating to claims for wrongful discharge, employment discrimination, or under COBRA, severance, any Benefit Plan, and other obligations of the Company to Company employees; (g) any Liability for Taxes of the Company and any sales, use or other Transaction Taxes imposed on the sale of the Purchased Assets to Buyer for which the Company is responsible pursuant to Section 1.7 of this Agreement, and (h) any noncompliance with any bulk sales, bulk transfer or similar laws applicable to the transactions contemplated hereby. Materiality standards or qualifications, and qualifications by reference to the material adverse effect in any representation, warranty or covenant shall be taken into account in determining whether a breach of or default in connection with such representation, warranty or covenant (or failure of any representation or warranty to be true and correct) exists, but shall not be taken into account in determining the amount of any Indemnifiable Damages with respect to such breach, default or failure to be true and correct. Neither the Company nor the Holders shall have any right of contribution, indemnification or right of advancement from the Buyer with respect to any Indemnifiable Damages claimed by an Indemnified Person.

### 8.2 Limitations.

(a) From and after the Closing, the total Liability for any claims for Indemnifiable Damages shall be limited to the Indemnity Amount and is only recoverable through setoff against the Contingent Payment not yet paid to the Company or the Holders (as the case may be), except that in the case of Fraud by the Company or any Holder, the Company or any such Holder that commits Fraud shall be liable for the full amount of any Indemnifiable Damages resulting therefrom up to the amount remitted by Lender to the Company pursuant to the Asset Purchase Agreement (before any deduction for Closing Deferred Revenue) plus any Contingent Payment made by the Buyer (after first setting such Indemnifiable Damages off against any unpaid Contingent Payment), provided that, with respect to a

Holder, the Indemnifiable Damages payable by such Holder in the case of Fraud pursuant to this sentence shall be limited to the amount actually received by such Holder pursuant to this Agreement or the Plan of Liquidation.

(b) Notwithstanding anything to the contrary herein, and except with respect claims by an Indemnified Person for failure of the representations and warranties contained in Section 2.2 (Authority; Noncontravention), Section 2.6 (No Assignment for Benefit of Creditors; Bankruptcy Filing), Section 2.9 (Title to Assets), Section 2.11 (Taxes), after the Closing no Indemnified Person shall be entitled to recover for Indemnifiable Damages pursuant to Section 8.1(a) unless and until the Indemnified Persons have incurred Indemnifiable Damages pursuant to claims for Indemnifiable Damages under Section 8.1(a) in excess of \$10,000 in the aggregate, after which the Indemnified Persons shall be entitled to seek recovery in accordance with this Article VIII for the entire amount of the Indemnifiable Damages.

(c) Any Indemnifiable Damages recoverable hereunder shall be reduced in amount by any insurance proceeds, indemnification payments, contribution payments or reimbursements actually realized by any Indemnified Person in connection with such Indemnifiable Damages or any of the circumstances giving rise thereto, and Buyer and the Indemnified Persons shall (i) use reasonable efforts to realize such proceeds, payments or reimbursements, and (ii) to the extent any such benefits, proceeds, payments or reimbursements are realized after such Indemnifiable Damages are recovered from setoff against the Contingent Payment, promptly repay the amount of such Indemnifiable Damages (not to exceed the amount of such proceeds, payments or reimbursements) to the Company, or paid directly to Holders pursuant to the written assignment of such right to the Contingent Payment by the Company to Holders or the Plan of Liquidation).

(d) In no event shall any "multiple of profits," "multiple of revenue," "multiple of EBITDA," "multiple of cash flow" or other valuation methodology be used in calculating the amount of any Indemnifiable Damages unless such were awarded to a third party pursuant to a Third Party Claim for which the Indemnified Persons were entitled to indemnification pursuant to this Article VIII and such claim for indemnification was actually made.

8.3 Period for Claims. Except as set forth in the next sentence hereto, the period during which claims may be made (the "*Claims Period*") for Indemnifiable Damages arising from or in connection with the matters listed in Section 8.1 shall commence at the Closing and terminate at 5:00 p.m., Eastern Standard Time, on the date that is 12 months following the Closing Date. Notwithstanding the foregoing, the Claims Period for Indemnifiable Damages arising out of, resulting from, or in connection with the failure of the representations and warranties contained in Section 2.2 (Authority; Noncontravention), Section 2.6 (No Assignment for Benefit of Creditors; Bankruptcy Filing), Section 2.9 (Title to Assets), Section 2.11 (Taxes) (collectively, with the matters listed in clauses (c)-(g) of Section 8.1, the "*Fundamental Claims*"), shall commence at the Closing and terminate upon the expiration of the applicable statute of limitations with respect to such claims, and the Claims Period for Indemnifiable Damages arising out of, resulting from or in connection with any Fraud by the Company shall commence at the Closing and shall not terminate.

#### 8.4 Claims.

(a) On or before the last day of the Claims Period, Buyer may deliver to the Company and to the Holders' Agent a certificate signed by any officer of Buyer (an "*Claims Certificate*");

(i) stating that an Indemnified Person has incurred, paid, reserved or accrued, or reasonably anticipates that it may incur, pay, reserve or accrue Indemnifiable Damages;



(ii) stating the amount of such Indemnifiable Damages (which, in the case of Indemnifiable Damages not yet incurred, paid, reserved or accrued, may be the maximum amount reasonably anticipated by Buyer to be incurred, paid, reserved, accrued or demanded by a third party); and

(iii) specifying in reasonable detail (based upon the information then possessed by Buyer or any Indemnified Person) the individual items of such Indemnifiable Damages included in the amount so stated and the nature of the claim to which such Indemnifiable Damages are related.

No delay in providing such Claims Certificate within the Claims Period shall affect Buyer's rights hereunder, unless (and then only to the extent that) the Company or the Holders are prejudiced thereby.

(b) Unless the Holders' Agent shall have objected to any claim or claims made in the Claims Certificate in a written statement delivered to Buyer prior to the expiration of 30 days from receipt of the Claims Certificate, upon the expiration of such 30-day period, Buyer (on behalf of itself or any other Indemnified Person) shall, pursuant to Section 8.2, and prior to seeking any direct recourse from the Company or the Holders, reclaim the amount equal to the Indemnifiable Damages specified in such Claims Certificate from the Indemnity Amount.

(c) If the Holders' Agent objects in writing to any claim or claims by Buyer made in any Claims Certificate, Buyer and the Holders' Agent shall attempt in good faith for 20 days after Buyer's receipt of such written objection to resolve such objection. If Buyer and the Holders' Agent shall so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties. Buyer shall be entitled to conclusively rely on any such memorandum, and Buyer shall reclaim an amount equal to the Indemnifiable Damages in accordance with Section 8.4(b) above and the terms of such memorandum.

(d) If no such agreement can be reached during the 20-day period for good faith negotiation, but in any event upon the expiration of such period, either Buyer or the Holders' Agent on behalf of the Company will submit the dispute to mandatory, final and binding arbitration in accordance with Section 9.10 within six months of the date of the Claims Certificate.

#### 8.5 Holders' Agent.

(a) Effective upon the dissolution of the Company, S3 Ventures Fund III, L.P., is hereby constituted and appointed as the Holders' Agent and as the duly appointed attorney-in-fact of each Holder having the duties, power and authority provided for in this Section 8.5. For purposes of this Agreement, the term "*Holders' Agent*" shall mean the agent for and on behalf of the Holders to: (i) give and receive notices, instructions, and communications permitted or required under this Agreement, or any other agreement, document or instrument entered into or executed in connection herewith, for and on behalf of any Holder, to or from Buyer (on behalf of itself or any other Indemnified Person) relating to this Agreement or any of the transactions and other matters contemplated hereby or thereby (except to the extent that this Agreement expressly contemplates that any such notice or communication shall be given or received by each Holder individually); (ii) review, negotiate and agree to and authorize Buyer to set off Indemnifiable Damages with Indemnifiable Damages up to the applicable Indemnity Amount in satisfaction of claims asserted by Buyer (on behalf of itself or any other Indemnified Person, including by not objecting to such claims) pursuant to this ARTICLE VIII, whether such claims are made before or after the dissolution of the Company; (iii) object to such claims pursuant to Section 8.4; (iv) consent or agree to, negotiate, enter into, or, if applicable, contest, prosecute or defend, settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to,

such claims, resolve any such claims, take any actions in connection with the resolution of any dispute relating hereto or to the transactions contemplated hereby by arbitration, settlement or otherwise, and take or forego any or all actions permitted or required of any Holder necessary in the judgment of the Holders' Agent for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement; (v) consult with legal counsel, independent public accountants and other experts selected by it, solely at the cost and expense of the Holders; (vi) consent or agree to any amendment to this Agreement or to waive any terms and conditions of this Agreement providing rights or benefits to the Holders in accordance with the terms hereof and in the manner provided herein; and (vii) take all actions necessary or appropriate in the judgment of the Holders' Agent for the accomplishment of the foregoing, in each case without having to seek or obtain the consent of any Person under any circumstance. The Holders shall be bound by all actions taken and documents executed by the Holders' Agent in connection with this ARTICLE VIII, and Buyer and other Indemnified Persons shall be entitled to rely exclusively on any action or decision of the Holders' Agent. The Person serving as the Holders' Agent may be replaced from time to time by S3 Ventures Fund III, L.P.

(b) The Holders' Agent shall not be liable to any former holder of Company capital stock for any act done or omitted hereunder as the Holders' Agent. The Holders' Agent shall serve as the Holders' Agent; provided, that the Holders shall severally indemnify the Holders' Agent and hold him harmless against any loss, liability or expense incurred arising out of or in connection with the acceptance or administration of his duties hereunder, including all reasonable out-of-pocket costs and expenses and legal fees and other legal costs reasonably incurred by the Holders' Agent.

(c) Any notice or communication given or received by, and any decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Holders' Agent that is within the scope of the Holders' Agent's authority under Section 8.5(a) shall constitute a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of all the Holders and shall be final, binding and conclusive upon each such Holder; and each Indemnified Person shall be entitled to rely exclusively upon any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction as being a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, each and every such Holder. Buyer and the Indemnified Persons are hereby relieved from any Liability to any Person for any acts done by them in accordance with such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of the Holders' Agent. After appointment of Holders' Agent, any decision, action, or failure to act by the Company with respect to this ARTICLE VIII is deemed to be the decision, action, or failure to act of the Holders' Agent, notwithstanding that such decision, action, failure to act by the Company may have occurred prior to the appointment of the Holders' Agent.

#### 8.6 Third-Party Claims.

(a) Promptly after receipt by any Indemnified Person of notice of the commencement of any action by a third party in respect of which, if successful, the Indemnified Person would be entitled to indemnification under ARTICLE VIII (a "*Third Party Claim*"), the Indemnified Person shall notify the Company and the Holders' Agent in writing, but any failure to so notify the Company or Holders' Agent, as the case may be, shall not relieve the Company or the Holders from any liability that it may have to the Indemnified Person other than to the extent the Company or Holders are materially prejudiced thereby. Such notification shall include a description in reasonable detail (to the extent known by the Indemnified Person) of the facts constituting the basis for such Third Party Claim and the amount of the Indemnifiable Damages claimed. In the event Buyer becomes aware of a Third

Party Claim that Buyer believes may result in an indemnification claim by or on behalf of an Indemnified Person, Buyer shall have the right in its sole discretion to conduct the defense of and to settle or resolve any such Third Party Claim (and the costs and expenses incurred by Buyer in connection with such defense, settlement or resolution (including reasonable attorneys' fees, other reasonable professionals' and experts' fees and court or arbitration costs) shall be included in the Indemnifiable Damages for which Buyer may seek indemnification pursuant to a claim made hereunder), subject to this Section 8.6; provided, however, that, except with the written consent of the Company or Holders' Agent (which consent shall not be unreasonably withheld, delayed or conditioned), no settlement of any such claim or consent to entry of any judgment with respect to such Third Party Claim shall alone be determinative of the validity of the Third Party Claim against the Indemnity Amount or personally against the Company or the Holders.

(b) The party controlling the defense of the Third Party Claim shall keep the other parties advised of the status of such Third Party Claim and the defense thereof and shall consider recommendations made by the other party with respect thereto.

## ARTICLE IX GENERAL PROVISIONS

9.1 Survival of Representations. The representations and warranties of the Company contained in this Agreement, the Company Disclosure Schedule (including any exhibit or schedule thereto) and in the other agreements and certificates contemplated hereby shall survive the Closing until the date that is 12 months following the Closing Date; provided, however, that no right to indemnification pursuant to ARTICLE VIII in respect of any claim that is set forth in an Officer's Certificate delivered to the Company prior to 5:00 p.m., Eastern Standard Time, on the expiration of the Claims Period shall be affected by the expiration of such representations and warranties; and provided, further, that such expiration or release shall not affect the rights of any Indemnified Person under ARTICLE VIII or otherwise to seek recovery of Indemnifiable Damages arising out of any Fundamental Claims or Fraud. The representations and warranties of Buyer contained in this Agreement, and in the other agreements and certificates contemplated hereby shall terminate at the Closing; provided, however, that intentional misrepresentations or fraudulent representations and warranties will survive indefinitely. All covenants of the parties shall expire and be of no further force or effect as of the Closing, except to the extent such covenants provide that they are to be performed after the Closing; provided, however, that no right to indemnification pursuant to Article VIII in respect of any claim based upon any breach of a covenant shall be affected by the expiration of such covenant.

9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (a) on the date of delivery, if delivered personally or by commercial delivery service or mailed by registered or certified mail (return receipt requested) or (b) on the date of confirmation of receipt (or the next Business Day, if the date of confirmation of receipt is not a Business Day), if 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 Buyer, to:

GiveGab, Inc.  
119 South Cayuga Street  
Suite 403  
Ithaca, NY 14850  
Attention: Charlie Mulligan  
Telephone No.: (517) 313-6724

Email: charlie@givegab.com

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

Fenwick & West LLP  
1211 Avenue of the Americas,  
32<sup>nd</sup> Floor  
New York, NY 10036  
Attention: Ian Goldstein  
Telephone No.: (917) 580-3277  
Email: igoldstien@fenwick.com

(b) if to the Company, to:

Kimbia, Inc.  
c/o S3 Ventures Fund III, L.P.  
6300 Bridgepoint Parkway  
Building One, Suite 405  
Austin, Texas 78730  
Attention: Mark Perkins, Brian R. Smith  
Telephone No.: 512-258-1759  
Email: mark@kimbia.com; brian@s3vc.com

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

Streusand, Landon & Ozburn, LLP  
811 Barton Springs Road  
Suite 811  
Austin, TX 78704  
Attention: Christopher Ozburn  
Telephone No.: 512-236-9908  
Fax No.: 512-236-9904  
Email: ozburn@slollp.com

(c) if to Holders' Agent, to:

S3 Ventures Fund III, L.P.  
6300 Bridgepoint Parkway  
Building One, Suite 405  
Austin, Texas 78730  
Attention: Brian R. Smith  
Telephone No.: 512-258-1759  
Email: brian@s3vc.com

9.3 Interpretation; Rules of Construction. When a reference is made in this Agreement to Articles, Sections or Exhibits, such reference shall be to an Article or Section of, or an Exhibit to this Agreement unless otherwise indicated. 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. The words "include," "includes" and "including" when used herein shall be deemed in each case to be

followed by the words "without limitation." The phrases "provided to," "furnished to," and phrases of similar import when used herein, unless the context otherwise requires, shall mean that a true, correct and complete paper or electronic copy of the information or material referred to has been provided to the party to whom such information or material is to be provided. Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; and (c) the terms "hereof," "herein," "hereunder" and derivative or similar words refer to this entire Agreement.

9.4 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 party hereto, it being understood that all parties hereto need not sign the same counterpart.

9.5 Entire Agreement; Parties in Interest. This Agreement (together with the applicable portions of the Asset Purchase Agreement) and the documents and instruments and other agreements specifically referred to herein or therein or delivered pursuant hereto or thereto, including all the exhibits attached hereto and the schedules hereto 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, (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 specifically provided herein.

9.6 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 the Company without the prior written consent of Buyer, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns. Buyer may assign or delegate this Agreement or any of its rights, interests or obligations under this Agreement to any direct or indirect wholly owned subsidiary of Buyer, without the consent of any other party hereto. Notwithstanding anything in this Section 9.6, the Company may assign its rights to receive the Contingent Payment to the Holders either via written assignment, or in connection with the Plan of Liquidation.

9.7 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 necessary to effect the intent of the parties hereto. The parties hereto shall use all reasonable best 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.

9.8 Remedies Cumulative. 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 and nothing in this Agreement shall be deemed a waiver by any party of any right to specific performance or injunctive relief. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any

other remedy to which they are entitled at law or in equity, and the parties hereby waive the requirement of any posting of a bond in connection with the remedies described herein.

9.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to such state's principles of conflicts of law.

9.10 Arbitration; Submission to Jurisdiction; Consent to Service of Process. EXCEPT FOR CLAIMS REGARDING EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION, TO WHICH THIS SECTION WILL NOT APPLY, IN THE EVENT THAT A RESOLUTION IS NOT REACHED AMONG THE PARTIES WITHIN THIRTY (30) DAYS AFTER WRITTEN NOTICE OF A DISPUTE, THE DISPUTE SHALL BE FINALLY SETTLED BY BINDING ARBITRATION IN THE COUNTY OF NEW YORK, NEW YORK. SUCH ARBITRATION SHALL BE CONDUCTED IN ENGLISH IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION BY ONE (1) ARBITRATOR APPOINTED IN ACCORDANCE WITH SUCH RULES. THE ARBITRATOR SHALL ALLOW SUCH DISCOVERY AS IS APPROPRIATE TO THE PURPOSES OF ARBITRATION IN ACCOMPLISHING A FAIR, SPEEDY, AND COST-EFFECTIVE RESOLUTION OF THE DISPUTE. THE ARBITRATOR SHALL REFERENCE THE FEDERAL RULES OF CIVIL PROCEDURE THEN IN EFFECT IN SETTING THE SCOPE AND TIMING OF DISCOVERY. THE AWARD OF ARBITRATION SHALL BE FINAL AND BINDING UPON BOTH PARTIES. THE ARBITRATOR WILL AWARD TO THE PREVAILING PARTY 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, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. Subject to the foregoing, the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in the State of New York, and hereby waive, and agree not to assert, as a defense in any Legal Proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such Legal Proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a New York State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 9.2 or in such other manner as may be permitted by applicable Legal Requirements, shall be valid and sufficient service thereof. With respect to any particular Legal Proceeding, venue shall lie solely in the County of New York. 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 pursuant to 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 Attorneys' Fees. Should any Legal Proceeding be brought to enforce or interpret any part of this Agreement, the prevailing party will be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court (including costs, expenses and fees on any appeal) and its costs of suit, regardless of whether such Legal Proceeding proceeds to final judgment.

9.12 No Joint Venture. Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between any of the parties hereto. Except as provided herein, no party is by virtue of this Agreement authorized as an agent, employee or legal representative of any other

party. Except as provided herein, no party will have the power to control the activities and operations of any other, and their status is, and at all times will continue to be, that of independent contractors with respect to each other with respect to this Agreement. Except as provided herein, no party will have any power or authority to bind or commit any other party. No party will hold itself out as having any authority or relationship in contravention of this Section 9.12.

9.13 Amendment; Extension; Waiver. Subject to the provisions of applicable law, the parties hereto may amend this Agreement at any time pursuant to an instrument in writing signed by the Company, Holders' Agent, and Buyer. At any time, any party hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other party hereto applicable to such party, (b) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. Without limiting the generality or effect of the preceding sentence, no delay in exercising any right under this Agreement shall constitute a waiver of such right, and no waiver of any breach or default shall be deemed a waiver of any other breach or default of the same or any other provision in this Agreement.

9.14 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the undersigned parties has caused this Ancillary Agreement in Support of Foreclosure Sale to be executed and delivered as of the date first written above.

**GiveGab, Inc.**

By: Charles Mulligan  
Name: Charlie Mulligan  
Title: Chief Executive Officer



IN WITNESS WHEREOF, each of the undersigned parties has caused this Agreement Ancillary to Foreclosure Sale to be executed and delivered as of the date first written above.

**Kimbia, Inc.**

By: W. Mark Perkins

Name: Mark Perkins

Title: Chief Executive Officer

**S3 Ventures Fund III, L.P.**

By: S3 Ventures GPLP III, L.P.  
its general partner

By: S3 Ventures III, L.L.C.  
its general partner

By: \_\_\_\_\_

Name: Brian R. Smith

Title: Managing Director

**Brian R. Smith**

\_\_\_\_\_

IN WITNESS WHEREOF, each of the undersigned parties has caused this Agreement Ancillary to Foreclosure Sale to be executed and delivered as of the date first written above.

**Kimbia, Inc.**

By: \_\_\_\_\_  
Name: Mark Perkins  
Title: Chief Executive Officer

**S3 Ventures Fund III, L.P.**

By: S3 Ventures GPLP III, L.P.  
its general partner

By: S3 Ventures III, L.L.C.  
its general partner  
*Brian R. Smith*

By: \_\_\_\_\_  
Name: Brian R. Smith  
Title: Managing Director

**Brian R. Smith**  
*Brian R. Smith*

\_\_\_\_\_

**EXHIBIT A**

**Holders**

**S3 Ventures Fund III, L.P.**

**Brian R. Smith**

**EXHIBIT B**  
**Plan of Liquidation**  
**Attached**

## PLAN OF LIQUIDATION

### OF

### KIMBIA, INC.

This Plan of Liquidation (this “**Plan**”) is intended to accomplish the complete liquidation and dissolution of Kimbia, Inc., a Delaware corporation (the “**Company**”), in accordance with the Delaware General Corporation Law (the “**DGCL**”), as follows:

#### 1. **Background.**

(a) **Square 1 Loan.** The Company and Pacific Western Bank, successor in interest by merger to Square 1 Bank (“**Lender**”), entered into that certain Loan and Security Agreement dated April 28, 2016 (such agreement, as amended or modified from time to time, together with all documents, instruments and agreements related there to, the “**Loan Documents**”).

(b) **Remedies on Default.** Upon a default by the Company under the Loan Documents, the Lender was entitled to sell the Company’s rights, title and interest in and to the Collateral (as defined in the Loan Documents) in a private foreclosure sale in accordance with the provisions of Article 9 of the Uniform Commercial Code as adopted in North Carolina.

(c) **Default and Sale of Assets.** Following the Company’s default under the Loan Documents, the Lender sent a Notification of Disposition of Collateral to the Company, and on January 18, 2018, pursuant to the terms of that certain Asset Purchase Agreement by and between Lender and GiveGab, Inc., a Delaware corporation (“**Purchaser**”), dated January 18, 2018, Lender sold substantially all of the Company’s assets to Purchaser (the “**Asset Sale**”).

(d) **Ancillary Agreements.** As a condition to completing the Asset Sale, the Company entered into an Agreement Ancillary to Foreclosure Sale with Purchaser (the “**Purchaser Ancillary Agreement**”) and an Agreement between the Company and Lender Ancillary to Foreclosure Sale dated the date of the Asset Sale (the “**Lender Ancillary Agreement**”). The Company’s Board of Directors (the “**Board**”) determined that it was in the best interests of the Company and its creditors and stockholders to enter into the Purchaser Ancillary Agreement and the Lender Ancillary Agreement, as that would allow the Asset Sale to occur, which the Board determined was the best available way to provide the greatest repayment of the Company’s creditors. In the Purchaser Ancillary Agreement, the Company and Purchaser made representations and warranties and undertook certain covenants and the Company, together with certain holders (the “**Holders**”) of subordinated debt (the “**Notes**”), released certain claims and agreed to provide indemnification to Purchaser against certain claims. In the Lender Ancillary Agreement, the Company and Lender made representations and warranties and undertook certain covenants and released certain claims.

(e) **Proceeds to the Company.** The Company has received from Lender the amount of proceeds from the Asset Sale in excess of the amounts required to pay and satisfy all outstanding obligations of the Company to Lender under the Loan Documents (the “**Closing Consideration**”). The Company also has the right to receive future payments that are contingent on the occurrence of certain transactions with the Company’s customers (the “**Contingent Consideration**”).

2. **Effective Date.** The Board has approved the dissolution of the Company under the DGCL and adopted this Plan and is requesting the written consent of the Company’s stockholders (the “**Stockholders**”) to dissolve and effect this Plan. If the Stockholders holding (i) a majority of the outstanding shares of the

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Company's capital stock, (ii) a majority of the outstanding shares of the Company's Series 2 Preferred Stock and (iii) a majority of the outstanding shares of the Company's Series 1-A Preferred Stock, each voting as a separate class ((i) through (iii) collectively, the "**Requisite Stockholders**"), vote in favor of the dissolution of the Company and the adoption of this Plan, this Plan shall constitute the adopted Plan of Liquidation of the Company as of the date that such approval is obtained (the "**Adoption Date**").

3. **Cessation of Business Activities.** After the Adoption Date, the Company shall not engage in any business activities except to the extent necessary to liquidate its remaining assets, wind up its business affairs, pay all creditors and claimants to the extent possible and distribute its remaining assets in accordance with this Plan and the Company's Amended and Restated Certificate of Incorporation, as amended (the "**Certificate of Incorporation**"). Following the Adoption Date, the Company shall file Forms 966, 1120 and 941, as and if required, with the Internal Revenue Service in accordance with, and in the time prescribed by, applicable laws.

4 **Continuing Employees and Consultants.** For the purpose of effecting the winding up of the Company's affairs, the Company has retained such employees and consultants as the Board deems necessary or desirable to supervise the winding-up process.

5. **Liquidation Process.** From and after the Adoption Date, the Company shall complete the following corporate actions:

(a) **Liquidation of Assets.** The Company shall, to the extent commercially reasonable, collect, sell, exchange or otherwise dispose of all of its remaining property and assets in one or more transactions upon such terms and conditions as the Board, in its absolute discretion, deems expedient and in the best interests of the Company and its creditors and Stockholders, without any further vote or action by the Stockholders. The Company's assets and properties may be sold in bulk to one buyer or a small number of buyers or on a piecemeal basis to numerous buyers. The Company will not be required to obtain appraisals or other third party opinions as to the value of its properties and assets in connection with such liquidation. In connection with such collection, sale, exchange and other disposition of the Company's assets, the Company shall collect or make provision for the collection of all accounts receivable, debts and claims owing to the Company or otherwise reduce such assets, to the extent possible, to cash. The Company's directors and officers are authorized and empowered to terminate the Company's PEO arrangement and such other agreements to which the Company is a party following the completion of the Asset Sale or as soon as practicable thereafter and to take all acts necessary or advisable in connection with such termination.

(b) **Payment of Obligations and Reservation of Contingent Fund.** In accordance with the provisions of Section 281(b) of the Delaware General Corporation Law, the Company shall satisfy or, as determined by the Board, make reasonable provision for the satisfaction of:

(i) all claims and obligations, including all contingent, conditional or unmatured contractual claims (including severance, retention and other compensation claims) known to the Company, excluding from such claims for payment purposes the claims on the Notes by reason of the Holders' agreement to subordinate such claims described in last paragraph of this Section;

(ii) any claim against the Company which is the subject of a pending action, suit or proceeding to which the corporation is a party; and

(iii) all claims that have not been made known to the Company or that have not arisen but that, based on facts known to the Company, are likely to arise or become known to the Company within 10 years after the date of dissolution as that date is determined by Section 275 of the DGCL.

Such valid claims shall be paid in full and any such provision for payment shall be made in full if there are sufficient assets; otherwise, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets legally available therefor. The Company shall set aside at least \$20,000 for payment of claims referenced in subparagraph 5(b)(iii) above.

As the Closing Consideration and the Contingent Consideration will not be sufficient to repay all creditor claims if the Notes are included in distribution to unsecured creditors, Holders of the Notes have agreed to subordinate claims with respect to their Notes to the payment of all other creditor claims against the Company and distribution to the Holders on account of the Notes shall be made under Section 5(c) from Net Distributable Cash after payment of all other creditor claims under this Section 5(b). Pursuant to the Purchaser Ancillary Agreement, the Company is permitted to assign to the Holders the right to the Contingent Payment but the Company shall not do so unless it has paid or provided for all other creditor claims as contemplated by this Section 5(b).

(c) **Distributions to Subordinated Notes and Stockholders.** The term “**Net Distributable Cash**” means all cash of the Company, including the cash proceeds of any sale, exchange or disposition of the Company’s property and assets, and any other assets including any payments received on the Contingent Consideration, if any, that remain **after** payment or making reasonable provision for (i) the claims and obligations of the Company (referenced in paragraph 5(b) above) including, without limitation, tax obligations, and (ii) all expenses and obligations related to dissolution and winding up of the Company pursuant to Section 8 below, including expenses related to the sale of the Company’s property and assets and expenses related to the collection and defense of the Company’s property and assets and (iii) all other obligations related to the liquidation and dissolution provided for in this Plan. From the Net Distributable Cash, the Company shall first pay the claims of the Holders on account of the Notes to the extent of available Net Distributable Cash, and if the Net Distributable Cash is insufficient to make payment in full on such Note claims, then such Holder claims shall be paid from the Net Distributable Proceeds pro rata based on the balances of their Notes (such payments, the “**Subordinated Debt Payments**”). If after completing the Subordinated Debt Payments, Net Distributable Proceeds remain, such funds shall be distributed to the Stockholders on account of their equity interests in the Company in accordance with the provisions of the Certificate of Incorporation. As the Net Distributable Cash will not be sufficient to repay the Notes in full, no funds will be available for distribution to the Stockholders. Such distribution to the Holders may occur all at once or in a series of distributions and shall be in cash or assets, in such amounts, and at such time or times, as the Board in its absolute discretion may determine, subject to the terms of the Certificate of Incorporation and this Plan.

6. **Certificate of Dissolution.** After the Adoption Date, and subject to the approval of the Requisite Stockholders of the dissolution of the Company, the directors or officers of the Company shall, at such time as the Board, in its absolute discretion, deems necessary, appropriate or desirable, obtain any certificates required from the Delaware tax authorities and, upon obtaining such certificates, the Company shall file with the Secretary of State of the State of Delaware a Certificate of Dissolution in accordance with the DGCL.

7. **Stockholder Consent to Sale of Assets.** Adoption of this Plan by the Requisite Stockholders shall constitute the approval of the Stockholders of the sale, exchange or other disposition in liquidation of all of the property and assets of the Company remaining after the closing of the Asset Sale, whether such sale, exchange or other disposition occurs in one transaction or a series of transactions, and shall constitute ratification of all contracts for sale, exchange or other disposition which are conditioned on adoption of this Plan.

8. **Expenses of Liquidation and Dissolution.** In connection with and for the purposes of implementing and assuring completion of this Plan, the Company may, in the absolute discretion of the Board, pay any

brokerage, agency, accountant, lawyer or other professional and other fees and expenses of persons rendering services to the Company in connection with the collection, sale, exchange or other disposition of the Company's property and assets and the implementation of this Plan.

9. **Indemnification.** The Company shall continue to indemnify its officers, directors, employees, agents and representatives in accordance with the Certificate of Incorporation and the Company's Bylaws and any contractual arrangements, for the actions taken in connection with this Plan and the winding up of the affairs of the Company. The Board, in its absolute discretion, is authorized to obtain and maintain insurance as may be necessary or appropriate to cover the Company's obligations hereunder.

10. **Address of the Company Post-Dissolution.** Following issuance of the Certificate of Dissolution by the Secretary of State of the State of Delaware, the mailing address and contact information for the Company shall be as follows:

Kimbia, Inc.  
c/o S3 Ventures III, LLC  
Attn: Brian R. Smith  
6300 Bridgepoint Parkway  
Building One, Suite 405  
Austin, Texas 78730

11. **Modification or Abandonment of the Plan.** Notwithstanding authorization or consent to this Plan and the transactions contemplated hereby by the Stockholders, the Board may modify, amend or abandon this Plan and the transactions contemplated hereby without further action by the Stockholders to the extent permitted by the DGCL.

12. **Authorization.** The Board of the Company is hereby authorized, without further action by the Stockholders once the Requisite Approval for dissolution has been obtained, to do and perform or cause the officers of the Company, subject to approval of the Board, to do and perform, any and all acts, and to make, execute, deliver or adopt any and all agreements, resolutions, conveyances, certificates and other documents of every kind which are deemed necessary, appropriate or desirable, in the absolute discretion of the Board, to implement this Plan and the transactions contemplated hereby, including, without limiting the foregoing, all filings or acts required by any state or federal law or regulation to wind up its affairs.

*[End of document.]*



## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of the 18th day of January, 2018, by and between Pacific Western Bank, successor in interest by merger to Square 1 Bank, with an address at 406 Blackwell Street, Suite 240, Durham, NC 27701 (“**Seller**”), and GiveGab, Inc., a Delaware corporation (“**Purchaser**”). Capitalized terms used but not defined in this Agreement shall have the respective meanings set forth in Annex A hereto.

### RECITALS

- A. Seller, on the one hand, and Kimbia, Inc., a Delaware corporation (“**Debtor**”), on the other hand, are parties to that certain Loan and Security Agreement dated April 28, 2016 (such agreement, as amended or modified from time to time, together with all documents, instruments and agreements related thereto, the “**Loan Documents**”).
- B. In order to secure Debtor’s prompt payment and performance of its obligations under the Loan Documents, Debtor granted to Seller, and Seller currently possesses, a security interest in and lien upon the assets of Debtor described in Exhibit A hereto (the “**Collateral**”). A copy of the UCC-1 Financing Statement filed by Seller with respect to the Collateral is attached hereto as Exhibit B.
- C. Debtor is in default under the Loan Documents.
- D. Under the terms of the Loan Documents, such default entitles Seller to sell Debtor’s right, title and interest in and to the Collateral in accordance with the provisions of Article 9 of the Uniform Commercial Code as adopted in North Carolina (the “**Code**”).
- E. Seller sent to Debtor a Notification of Disposition of Collateral on January 5, 2018 and a second Notice of Disposition of Collateral on January 11, 2018.
- F. Seller wishes to sell to Purchaser, and Purchaser wishes to purchase from Seller, Debtor’s right, title and interest in and to the Transferred Assets (as hereafter defined) pursuant to the provisions of the Code.

NOW, THEREFORE, in consideration of the premises and mutual covenants 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 1**  
**SALE AND PURCHASE**

1.1 Agreement to Purchase and Sell.

(a) Subject to the terms and conditions of this Agreement, and pursuant to Section 9-610 of the Code, Seller, as a foreclosing creditor in a private sale, agrees to sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned, and delivered, to Purchaser, and Purchaser agrees to purchase from Seller, all of Debtor's right, title and interest in and to all of the following Collateral, free and clear of all Encumbrances, other than the Excluded Assets (the "**Transferred Assets**"):

(i) subject to Section 1.5, all right, title and interest of Seller in and to the Contracts (including the **Purchased Intellectual Property Agreements**, defined in Annex A) listed on Schedule 1.1(a)(i) hereto (collectively, the "**Assigned Business Agreements**")

(ii) all right, title and interest of Seller in and to Debtor Owned Intellectual Property (including the **Registered Purchased Intellectual Property**, defined in Annex A, as set forth on Schedule 1.1(a)(ii) hereto) (the "**Purchased Intellectual Property**"), and all tangible embodiments of the Purchased Intellectual Property (including the source code related thereto);

(iii) all right, title and interest of Seller in and to Debtor's customer and user databases, including all content and information contained therein;

(iv) Seller's rights or causes of action arising out of occurrences before the Closing relating to the Transferred Assets, including, without limitation, all rights under express or implied warranties relating to the Transferred Assets and all rights, claims, credits, causes of action or rights of set-off against third parties relating to the Transferred Assets, including all rights to seek and obtain injunctive relief and to recover damages for past, present and future infringement relating to the Transferred Assets relating to the period prior to Closing;

(v) all right, title and interest of Seller in and to all contracts or agreements between Debtor and any employee or consultant of Debtor solely to the extent that they relate to confidentiality, nondisclosure, assignment of proprietary rights or noncompetition (and, for purposes of clarification and not limitation, excluding any Liabilities of Debtor thereunder and/or any obligation to employ or retain the services of any such employee or consultant (the "**Excluded Services Liabilities**"), in each case, solely with respect to the Business as conducted prior to the Closing (collectively, with the Assigned Business Agreements, the "**Assigned Agreements**");

(vi) all tangible assets set forth on Schedule 1.1(a)(vi);

(vii) such additional assets set forth on Schedule 1.1(a)(vii);

(viii) all accounts receivable of Debtor for products to be sold or services to be rendered after Closing to the extent not deducted from the Purchase Price as Closing Deferred Revenue; and

(ix) the goodwill associated with the Transferred Assets and the Business.

The purchase and sale of the Transferred Assets pursuant to this Agreement may be referred to herein as the “**Asset Purchase**.” To the extent that any tangible or intangible assets (including any accounts receivable) or rights are discovered or identified at any time after the Closing that, pursuant to this Agreement, constitute Transferred Assets (or may have been if such assets or rights had been listed in the applicable schedules or otherwise previously disclosed to Purchaser) and should have been considered for transfer to Purchaser, Seller shall immediately notify Purchaser of such discovery and, upon request from Purchaser, Seller shall immediately transfer and promptly deliver the requested assets or rights (or cause them to be delivered) to Purchaser (together with executed instruments of conveyance as necessary to transfer all of Seller’s rights, title and interest therein) without additional payment or other consideration and such additional assets shall constitute Purchased Assets hereunder.

In furtherance of the foregoing, if Seller receives any accounts receivable that qualify as a Transferred Asset hereunder, Seller shall promptly (and within three (3) Business Days) remit such accounts receivable to Purchaser.

1.2 Excluded Assets. Notwithstanding anything contained herein or in any other instrument, conveyance or document delivered pursuant to this Agreement to the contrary, the Transferred Assets shall not include any of Seller’s rights, titles or interests in and to any asset or property, whether tangible or intangible, real or personal, wherever situated, that is not expressly listed as a Transferred Asset and, for the avoidance of doubt, shall not include any of the following (collectively, the “**Excluded Assets**”):

(a) Any Contract (or any rights or obligations related to any Contract) other than the Assigned Agreements, including the Contracts set forth on Schedule 1.1(b)(i);

(b) All cash, deposit accounts, time deposits, marketable securities and other cash equivalents of Seller or Debtor as of the Closing; and

(c) All accounts receivable of Debtor and all rights of Debtor to payments for revenue that has been earned but not invoiced by Debtor, in each case solely to the extent accrued for products sold or services rendered by Debtor prior to the Closing. For the avoidance of doubt, if revenue is considered earned on a full-month basis rather than on a specific product or project basis, then one-half of such monthly revenue for the month of January 2018 is considered earned by Debtor.

1.3 Assumed Liabilities. Other than the Liabilities associated with the performance of services under the Assigned Business Agreements for the period following the Closing (the “**Assumed Liabilities**”), Purchaser shall assume no Liabilities or other obligations of Seller or Debtor, any Affiliate of Seller or Debtor or stockholder or noteholder of Debtor, whether currently existing or hereinafter created, including but not limited to any Liabilities arising out of

or relating to (a) the use or ownership of the Transferred Assets or the operation of the Business by Debtor prior to the Closing or any Liabilities arising out of the Transferred Assets or the operation of the Business by Debtor prior to the Closing, (b) any Liability relating to Taxes or any Liabilities of any Person other than the Debtor that are imposed on Debtor under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise; (c) all Liabilities of Debtor for Taxes incident to or arising out of the negotiation, preparation, approval or authorization of this Agreement the transactions contemplated hereby (including all Transaction Taxes), (d) the Benefits Liabilities, (e) any Liability with respect to any employee or consultant of Debtor related to such employee or consultant's employment or services with Debtor, including but not limited to the Excluded Services Liabilities and any Liabilities relating to, wrongful discharge, employment discrimination, severance, the termination of such employee or consultant's employment or services with Debtor whether or not in connection with the transactions contemplated hereby and employee or consultant withholding or reporting Tax Liabilities, (f) the Excluded Assets, and (g) all fees and expenses incurred by Debtor or any Affiliate of Debtor in connection with the transactions contemplated hereby (collectively, the "**Excluded Liabilities**"). For the avoidance of doubt, Purchaser's assumption of such Assumed Liabilities shall be subject to the consummation of the Closing.

1.4 Liabilities. Seller (or pursuant to the Ancillary Agreement, Debtor) will retain, and will be solely responsible for paying, performing and discharging, and Purchaser will not assume or otherwise have any responsibility or liability for, and Seller (or pursuant to the Ancillary Agreement, Debtor) will retain, and will be solely responsible for paying, performing and discharging promptly when due, any Excluded Liabilities. Purchaser hereby assumes, and will be solely responsible for paying, performing and discharging the Assumed Liabilities.

1.5 Assignment of Contracts and Rights. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Transferred Asset or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without consent of a third party thereto, would constitute a breach or other contravention thereof or in any way adversely affect the rights of Purchaser, Debtor or Seller thereunder.

1.6 Purchase Price and Payment of the Purchase Price. Subject to the terms and conditions set forth in this Agreement, as consideration for the Transferred Assets and the assumption of the Assumed Liabilities, the purchase price shall be the following consideration (the "**Purchase Price**"):

- (a) the amount of indebtedness owed by Debtor to Seller under the Loan Documents as of the Closing, excluding Seller Expenses: \$2,103,338.70;
- (b) \$1,004,464.30; and
- (c) additional consideration as set forth below (collectively, the "**Contingent Payment**"):

(i) if Purchaser or any of its Affiliates completes a Giving Day (as defined in the Master Hosting and Service Provider Agreement between Debtor and GiveMN, a Minnesota non-profit corporation ("**GiveMN**"), dated as of February 11, 2014 (the "**Current GiveMN Contract**")) in the capacity of the sole technology hosting partner for GiveMN on or prior to December 31, 2018, whether pursuant to the Current GiveMN Contract, or a new contract entered into between Purchaser or any of its Affiliates and GiveMN, then within 15 days after Purchaser receives payment for such Giving Day, Purchaser shall make a cash payment to Debtor equal to the greater of the Net Platform Fees Earned from hosting such Giving Day (up to a maximum amount of \$250,000) and \$75,000; and

(ii) if Purchaser or any of its Affiliates completes a Giving Day as the sole technology hosting partner for Communities Foundation of Texas on or prior to December 31, 2018, Purchaser shall make a cash payment to Debtor equal to the greater of the Net Platform Fees Earned from hosting such Giving Day (up to a maximum amount of \$250,000) and \$75,000.

For the avoidance of doubt, each payment set forth in Section 1.6(c)(i) and Section 1.6(c)(ii) is a separate payment, independent of each other, and governed by the terms of Section 1.6(c)(i) and Section 1.6(c)(ii), respectively. At Closing, Purchaser shall pay the amounts set forth in Section 1.6(a) and Section 1.6(b) in cash to Seller by wire transfer of immediately available funds. Seller agrees that, upon receipt of the amounts set forth in Section 1.6(a) and Section 1.6(b), all Encumbrances on the Collateral other than the Cash Collateral Accounts shall be released, all indebtedness outstanding under the Loan Documents other than the Bank Retained Liabilities shall be paid and satisfied in full, and that all of Debtor's obligations to Seller under the Loan Documents (other than the Bank Retained Liabilities and the inchoate indemnity obligations which survive termination by their terms) shall terminate in full without any further action of Seller or Debtor. Seller hereby authorizes Purchaser to file UCC-3 termination statements (or any other applicable termination statement) on behalf of Seller upon Closing, and Seller shall take such further actions and execute such further documents (including without limitation releases of filings with the United States Patent and Trademark Office) as Purchaser may reasonably request to terminate all Encumbrances on the Transferred Assets. The payment set forth in Section 1.6(b) will be excess proceeds from the sale and will be distributed to the Debtor ("**Excess Funds**"), which must be accounted for to Debtor as "surplus" under the UCC. The process, and conditions, by which the Excess Funds shall be paid to Debtor are set forth in the Seller Ancillary Agreement. Seller agrees to the disbursement of the Purchase Price set forth in the Seller Ancillary Agreement hereto and agrees that the Contingent Payment of the Purchase Price shall be included in Excess Funds. In furtherance of the provisions of this paragraph, Section 3.4 of the Seller Ancillary Agreement provides for Seller's transfer of all right, title and interest in and to such Contingent Payment to Debtor, and Seller agrees that thereafter all matters related to the Contingent Payment shall be solely between the Debtor and the Purchaser, including matters relating to amount (if any) and payment of the Contingent Payment and any indemnification claims against the Contingent Payment as contemplated in the Ancillary Agreement, without any further rights or obligations on the part of Seller.

1.7 Closing and Closing Date. Subject to the satisfaction (or waiver) of the closing conditions set forth in Article 4, closing of the transactions contemplated hereby (the “**Closing**”) shall occur on the date hereof (the “**Closing Date**”).

1.8 Deliveries at Closing. At the Closing, Seller and Purchaser shall exchange, execute, or cause to be executed (as applicable), the following documents:

(a) The executed Agreement Ancillary to Foreclosure Sale by and between Purchaser and Debtor attached hereto as Exhibit C (the “**Ancillary Agreement**”);

(b) The executed Agreement between Seller and Debtor Ancillary to Foreclosure Sale attached hereto as Exhibit D (the “**Seller Ancillary Agreement**”);

(c) a Bill of Sale and Assignment and Assumption in the form attached hereto as Exhibit E (the “**Bill of Sale**”)

(d) The Domain Name Assignment Agreement, Patent Assignment Agreement, and Trademark Assignment Agreement, in the form attached hereto as Exhibits F, G, and H (collectively the “**IP Assignment Agreements**”).

## **ARTICLE 2**

### **REPRESENTATIONS AND WARRANTIES**

2.1 Representations and Warranties of Seller. Seller represents and warrants to Purchaser that each of the following is true and correct as of the Closing Date:

(a) Seller owns the Loan Documents and the indebtedness and obligations evidenced thereby free and clear of all liens, security interests and Encumbrances.

(b) Seller has an enforceable security interest in and lien upon the Transferred Assets pursuant to the Loan Documents, and such security interest and lien secures all of Debtor’s indebtedness and obligations under the Loan Documents.

(c) Debtor has defaulted under the terms of the Loan Documents, Seller has notified Debtor of such default, and such default has not been cured pursuant to the terms of the Loan Documents.

(d) The indebtedness and obligations evidenced by the Loan Documents are presently due and payable in full, and Seller is entitled to dispose of the Collateral in accordance with the Notification of Disposition of Collateral.

(e) This Agreement has been duly authorized, executed and delivered by Seller. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency and similar laws of general application relating to or affecting the rights of creditors generally.

(f) The execution, delivery and performance of this Agreement does not and will not (i) constitute a violation of the certificate of formation or the bylaws, as the case may be, of Seller, (ii) constitute a violation of any statute, judgment, order, decree or regulation or rule of any Governmental Body applicable or relating to Seller, or (iii) constitute a default under any contract to which Seller is a party.

(g) True copies of the Notification of Disposition of Collateral sent by Seller to Debtor on January 5, 2018 and the Notification of Disposition of Collateral sent by Seller to Debtor on January 11, 2018 are attached hereto as Exhibit I.

(h) The Recitals set forth above are true and correct in all material respects.

(i) Seller is authorized to execute such documents and take such other actions as are necessary to transfer to Purchaser all of Debtor's right, title and interest in, to or arising under the Transferred Assets; provided, however, that notwithstanding anything contained in this Agreement to the contrary, Seller makes no representation or warranty that any lease, permit, license, contract or contract right may be assigned without the consent of the other parties thereto.

EXCEPT AS PROVIDED FOR ABOVE, PURCHASER ACKNOWLEDGES THAT (A) PURCHASER IS NOT RELYING UPON ANY REPRESENTATION OR WARRANTY OF SELLER, EXPRESS OR IMPLIED, AND (B) SELLER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY CONCERNING ANY OF THE TRANSFERRED ASSETS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY WITH RESPECT TO: THE CONDITION OR MERCHANTABILITY OF THE TRANSFERRED ASSETS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSES OR USE; TITLE, POSSESSION OR QUIET ENJOYMENT; THE DESIGN OR CONDITION OF THE TRANSFERRED ASSETS; THE QUALITY OR CAPACITY OR WORKMANSHIP OF THE TRANSFERRED ASSETS; COMPLIANCE BY THE TRANSFERRED ASSETS WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION, OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT OR LATENT DEFENSES; ANY LICENSES OR CERTIFICATIONS THAT MAY OR MAY NOT BE REQUIRED BY ANY GOVERNMENTAL BODY WITH RESPECT TO ANY OF THE TRANSFERRED ASSETS; AND THE ENVIRONMENTAL CONDITION OF THE TRANSFERRED ASSETS, INCLUDING BUT NOT LIMITED TO WHETHER THE TRANSFERRED ASSETS ARE CONTAMINATED WITH ANY HAZARDOUS SUBSTANCE REGULATED BY ANY FEDERAL, STATE, OR LOCAL STATUTE, LAW, ORDINANCE, OR REGULATION, INCLUDING BUT NOT LIMITED TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, AND THE RESOURCE RECOVERY AND CONSERVATION ACT, AS AMENDED.

2.2 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that each of the following is true and correct as of the Closing Date:

(a) Purchaser is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) This Agreement has been duly authorized, executed and delivered by Purchaser. This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency and similar laws of general application relating to or affecting the enforcement of rights of creditors.

(c) The execution, delivery and performance of this Agreement does not and will not (i) constitute a violation of the certificate of incorporation or the bylaws, as the case may be, of Purchaser, (ii) constitute a violation of any statute, judgment, order, decree or regulation or rule of any Governmental Body applicable or relating to Purchaser, or (iii) constitute a default under any contract to which Purchaser is a party.

(d) Consummation of this Agreement, and Purchaser's incurring of its obligations hereunder will not render Purchaser insolvent.

(e) PURCHASER HAS BEEN GIVEN THE OPPORTUNITY TO CONDUCT, AND HAS CONDUCTED, ALL INSPECTIONS, INVESTIGATIONS, TESTS, AND REVIEWS OF THE TRANSFERRED ASSETS AS PURCHASER DEEMS NECESSARY AND APPROPRIATE FOR THE PURPOSES OF THIS AGREEMENT, AND HAS DETERMINED TO PURCHASER'S SATISFACTION THE CONDITION OF THE TRANSFERRED ASSETS, THE VALUE OF THE TRANSFERRED ASSETS, AND ALL OTHER ASPECTS OF THE TRANSFERRED ASSETS THAT PURCHASER DEEMS RELEVANT FOR THE PURPOSES HEREOF.

### **ARTICLE 3** **COVENANTS**

3.1 Reasonable Efforts to Satisfy Conditions. Seller shall use its reasonable efforts to cause the conditions to Purchaser's obligations set forth in Section 4.2 to be satisfied to the extent that the satisfaction of such conditions is in the control of Seller, and Purchaser shall use its reasonable efforts to cause the conditions to Seller's obligations set forth in Section 4.3 to be satisfied to the extent that the satisfaction of such conditions is in the control of Purchaser.

3.2 Payment of Taxes. Purchaser shall pay, or shall cause Debtor to pay by their agreement, when due any sales Taxes, transfer Taxes, or other similar Taxes triggered by the sale of the Transferred Assets by Seller to Purchaser or other transactions contemplated by this Agreement, the Ancillary Agreement, the Bill of Sale or the IP Assignment Agreements. Purchase and Seller shall cooperate in good faith to mitigate or reduce the incidence of any Transaction Taxes.

3.3 Further Assurances. At the Closing, and at all times thereafter as may be necessary, the parties hereto shall execute, or take such actions as may be reasonable and necessary to cause to be executed, such other instruments of transfer as shall be reasonably necessary or appropriate to transfer to Purchaser all of Debtor's right, title and interest in and to the Transferred Assets and to otherwise effectuate the intent of this Agreement; provided, however, that any actions requested of Seller shall be at Purchaser's expense (including but not limited to Seller's reasonable legal expenses).



**ARTICLE 4**  
**CONDITIONS OF THE CLOSING**

4.1 Execution of Ancillary Agreements. Purchaser and Debtor have executed and delivered the Ancillary Agreement. Seller and Debtor have executed and delivered the Seller Ancillary Agreement.

4.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the Asset Purchase are subject to the satisfaction of the following conditions:

(a) Representations and Warranties. The representations and warranties of Seller set forth in Section 2.1 hereof, and in each certificate, agreement, document or instrument executed in connection with this Agreement, are true and correct as of the Closing Date.

(b) Performance of Obligations. Seller shall have performed all obligations required to be performed by Seller under this Agreement as of the Closing Date.

(c) Delivery of Instruments. Seller shall have delivered to Purchaser the fully executed Bill of Sale, IP Assignment Agreements, and such other conveyance documents as may be required to effect the transfer and conveyance of Debtor's right, title and interest in and to the Transferred Assets to Purchaser.

(d) Termination of Security Interest on Purchased Intellectual Property. Seller shall have delivered to Purchaser forms of release of security interest in form and substance satisfactory to Purchaser to terminate any filings made with the United States Patent and Trademark Office with respect to the security interest granted in the Loan Documents against the Purchased Intellectual Property, which Purchaser shall be authorized to file upon the Closing.

4.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the Asset Purchase are subject to the satisfaction of the following conditions.

(a) Representations and Warranties. The representations and warranties of Purchaser set forth in Section 2.2 hereof, and in each certificate, agreement, document or instrument executed in connection with this Agreement, are true and correct as of the Closing Date.

(b) Performance of Obligations. Purchaser shall have performed all obligations required to be performed by Purchaser under this Agreement as of the Closing Date.

4.4 Conditions to Obligations of Purchaser and Seller. Neither party to this Agreement shall have any obligation to consummate the Asset Purchase if in any litigation or other proceeding(s) any party's performance of its obligations under this Agreement is stayed.

**ARTICLE 5**  
**GENERAL PROVISIONS**

5.1 Expenses. Except as otherwise specifically provided herein, Seller and Purchaser shall each bear its own legal fees, accounting fees and other costs and expenses with respect to

the negotiation, execution and delivery of this Agreement and the consummation of the Asset Purchase.

5.2 Tax Effect of the Asset Purchase. Neither Seller nor Purchaser make, nor have they made, to any other Person any representation or warranty with respect to the tax consequences of the Asset Purchase. It is understood and agreed that each party has relied upon its own advisors for advice and counsel as to such tax effects.

5.3 Entire Agreement. This Agreement (including its exhibits) and the documents being executed concurrently herewith collectively constitute the entire agreement between Seller and Purchaser with respect to the transactions contemplated by this Agreement, and supersede all prior oral or written discussions, agreements or understandings with respect thereto. This is an integrated agreement.

5.4 Descriptive Headings. The headings of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

5.5 Notices. All notices or other communications which are required or permitted hereunder shall be in writing and shall be delivered either personally, by certified mail (postage prepaid and return receipt requested), by express courier or delivery service, or by e-mail, addressed to the parties as follows:

If to Seller: Alan Faulkner  
Senior Vice President – Venture Banking  
Pacific Western Bank  
406 Blackwell Street, Suite 240  
Durham, NC 27701  
E-mail: afaulkner@square1bank.com

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

Levy, Small & Lallas  
815 Moraga Dr.  
Los Angeles, CA 90049  
Attention: Leo D. Plotkin  
E-mail: lplotkin@lsl-la.com

If to Purchaser: GiveGab, Inc.  
119 South Cayuga Street  
Suite 403  
Ithaca, NY 14850  
Attention: Charlie Mulligan  
Telephone No. (517) 313-6724  
Email: charlie@givegab.com

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

Fenwick & West LLP  
1221 Avenue of the Americas  
32<sup>nd</sup> Floor  
New York, NY 10036  
Attention: Ian Goldstein  
Telephone No.: (917) 580-3277  
Email: igoldstein@fenwick.com

Notices shall be deemed given when sent, if sent by e-mail (unless the sender receives a notice that the e-mail transmission failed); and when delivered and receipted for (or upon the date of attempted delivery where delivery is refused) if hand-delivered, sent by certified mail, or sent by express courier or delivery service.

5.6 Governing Law; Jurisdiction; Venue; Arbitration. This Agreement and all acts, transactions, disputes and controversies arising hereunder or relating hereto, and all rights and obligations of the parties shall be governed by, and construed in accordance with, the internal laws (and not the conflict of laws rules) of the State of North Carolina. Any dispute, controversy, claim, action or similar proceeding arising out of or relating to this Agreement or any related documents, instruments or agreements (including, but not limited to, the Bill of Sale), or any of the transactions contemplated therein, shall be settled by final and binding arbitration held in Durham County, North Carolina, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association by one arbitrator appointed in accordance with those rules. The arbitrator shall apply North Carolina law to the resolution of any dispute, without reference to rules of conflicts of law or rules of statutory arbitration. Judgment upon any award resulting from arbitration may be entered into and enforced by any state or federal court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this Section. The costs and expenses of the arbitration, including without limitation, the arbitrator's fees and expert witness fees, and reasonable attorneys' fees, incurred by the parties to the arbitration may be awarded to the prevailing party, in the discretion of the arbitrator, or may be apportioned between the parties in any manner deemed appropriate by the arbitrator. Unless and until the arbitrator decides that one party is to pay for all (or a share) of such costs and expenses, both parties shall share equally in the payment of the arbitrator's fees as and when billed by the arbitrator.

5.7 JURY TRIAL WAIVER. PURCHASER AND SELLER EACH ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THEM, AFTER CONSULTING, OR HAVING HAD THE OPPORTUNITY TO CONSULT, WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED DOCUMENT, INSTRUMENT OR OTHER AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY

THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY PURCHASER OR SELLER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY PURCHASER OR SELLER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM.

5.8 Waivers and Amendments. Any waiver of any term or condition of this Agreement, or any amendment to this Agreement, shall be effective only if in writing. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

5.9 Third Party Rights. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not create benefits on behalf of any Person who is not a party to this Agreement, and this Agreement shall be effective only as between the parties hereto, their successors and permitted assigns, except that with respect to the distribution of Excess Funds to Debtor, Section 1.6 is intended to benefit Debtor.

5.10 Severability. In the event that any provision contained in this Agreement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of such provision in every other respect, and the remaining provisions of this Agreement, shall not, at the election of the party for whose benefit the provision exists, be in any way impaired.

5.11 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original of this Agreement, but all such counterparts together shall constitute but one agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have executed this Asset Purchase Agreement on the date first above written.

Purchaser:

GIVEGAB, INC.

By: Charles Mulligan  
Name: Charles Mulligan  
Title: Chief Executive Officer

Seller:

PACIFIC WESTERN BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to Asset Purchase Agreement]*

IN WITNESS WHEREOF, the undersigned have executed this Asset Purchase Agreement on the date first above written.

Purchaser:

GIVEGAB, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Seller:

PACIFIC WESTERN BANK

By:  \_\_\_\_\_

Name: Ken Pedert

Title: SVP-Technology Banking

*[Signature Page to Asset Purchase Agreement]*

## ANNEX A

### Definitions

**“Affiliate”** means any Person that, directly or indirectly, controls, or is controlled by or under common control with, another Person. For the purposes of this definition, “control” (including the terms “controlled by” and “under common control with”), as used with respect to any Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

**“Bank Retained Liabilities”** means the liabilities of Seller as set forth in Section 3.2 of the Seller Ancillary Agreement.

**“Benefits Liabilities”** has the meaning set forth in the Ancillary Agreement.

**“Business”** means Debtor’s business as previously conducted and currently conducted.

**“Business Day”** means a day (a) other than Saturday or Sunday and (b) on which commercial banks are open for business in New York, NY.

**“Cash Collateral Accounts”** has the same meaning set forth in the Seller Ancillary Agreement.

**“Contract”** means any written or oral legally binding contract, agreement, instrument, commitment or undertaking of any nature (including leases, licenses, mortgages, notes, guarantees, sublicenses, subcontracts and purchase orders).

**“Debtor Owned Intellectual Property”** has the same meaning as Company Owned Intellectual Property set forth in the Ancillary Agreement.

**“Encumbrance”** means any lien, pledge, charge, mortgage, easement, encroachment, imperfection of title, title exception, title defect, right of possession, lease, security interest, adverse claim of title, interference or restriction on transfer but, excluding, with respect to Intellectual Property, non-exclusive rights granted under Intellectual Property by Seller in the ordinary course of business.

**“Governmental Body”** means any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

**“Intellectual Property”** means (A) Intellectual Property Rights and (B) Proprietary Information and Technology, as defined in the Ancillary Agreement.

**“Liabilities”** means all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, asserted or unasserted, known or unknown, including those arising under any law, action or governmental order and those arising under any Contract.

**“Net Platform Fees Earned”** means the amount of platform fees Purchaser receives in connection with hosting a “Giving Day,” minus any revenue sharing payment made by Purchaser. For the avoidance of doubt, Net Platform Fees Earned shall not include any credit card fees or other miscellaneous fees.

**“Person”** means an individual, partnership, joint venture, corporation, bank, trust, unincorporated organization, or a Governmental Body.

**“Purchased Intellectual Property Agreements”** means any Contract governing any of Debtor’s Intellectual Property to which Seller now holds right, title, or interest, except for Contracts for Debtor’s Intellectual Property licensed from a third party that is generally, commercially available software and (i) is not material to Debtor’s business; (ii) has not been modified or customized for Debtor; and (iii) is licensed for an annual fee under \$10,000.

**“Registered Purchased Intellectual Property”** means the United States, international and foreign: (A) patents and patent applications (including provisional applications); (B) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks; and (C) registered Internet domain names; and (D) registered copyrights and applications for copyright registration; in each case (A)–(D), registered or filed in the name of Debtor, that constitute Purchased Intellectual Property.

**“Seller Expenses”** means all costs and expenses that constitute Bank Expenses as defined in the Loan Documents, including all reasonable costs or expenses (including reasonable attorneys’ fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents, reasonable Collateral audit fees, and Seller’s reasonable attorneys’ fees and expenses (whether generated in-house or by outside counsel) incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding (as defined in the Loan Documents), whether or not suit is brought.

**“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), (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.

**“Transaction Taxes”** has the meaning set forth in the Ancillary Agreement.



**SCHEDULE 1.1(A)**

**Attached**

## **Schedule 1.1(a)(i)**

### **Assigned Business Agreements**

#### **Customer Agreements**

1. Software & Services Agreement between Debtor and Communities Foundation of Texas effective April 1, 2016
2. Master Hosting and Service Provider Agreement dated February 11, 2014 between GiveMN and Debtor, as amended May 1, 2017 and October 1, 2017; SOW #2 of the Master Hosting and Service Provider Agreement dated February 11, 2014; GiveMN Giving Program Fund Establishing Document effective October 13, 2017.
3. Software & Services Agreement between Debtor and The Miami Foundation effective August 1, 2016
4. Software & Services Agreement between Debtor and Lancaster County Community Foundation effective June 1, 2015.
5. Master Services Agreement between Debtor and Purdue Research Foundation effective October 1, 2017; SOW Purdue Day of Giving 2018 dated October 24, 2017
6. Software & Services Agreement between Debtor and Community Foundation of Western Massachusetts effective October 1, 2016; SOW 2018 Giving Day Set-up and Support effective December 4, 2017; Addendum for the K Foundation - Community Foundation of Western Massachusetts and Establishing Document, dated December 4, 2017
7. Software & Services Agreement between Debtor and Fairfield County's Community Foundation effective July 1, 2017; SOW 2018 Fairfield County Gives - Giving Day Standard Package dated August 8, 2017; Addendum for the K Foundation - Fairfield County Community Foundation dated November 8, 2017.
8. Master Service Agreement between Debtor and First Community Foundation Partnership of Pennsylvania effective November 1, 2017; SOW 2018 Raise the Region Day Renewal effective November 20, 2017
9. Software & Services Agreement between Debtor and Community Foundation of St Joseph County effective January 1, 2017
10. Software & Services Agreement between Debtor and Georgetown University effective March 1, 2017; Georgetown University Contracts Department Customer Information Addendum effective June 5, 2017.
11. Master Service Agreement between Debtor and Kitsap Community Foundation effective October 1, 2017; SOW 2018 Kitsap Great Give Giving Day Renewal effective October 23, 2017
12. Master Service Agreement between Debtor and University of Maryland effective October 1, 2017; SOW 2018 University of Maryland Giving Day (HE) Professional effective October 21, 2017
13. Master Service Agreement between Debtor and Springfield College effective October 1, 2017; SOW 2018 Springfield College Giving Day (HE) Professional effective November 8, 2017.
14. Master Service Agreement between Debtor and Community Foundation for Southwest Washington effective February 1, 2016
15. Master Service Agreement between Frances P. Bunnelle Foundation (Palmetto Giving Day) effective August 1, 2017
16. Software & Services Agreement between Debtor and United Way of National Capital Area effective February 1, 2017
17. Master Services Agreement between Debtor and Trustees of Boston University, through WBUR effective October 1, 2017; SOW 2018 Large Giving Day Set-up and Support (Returning Client) effective October 13, 2017; Kimbia Terms of Service #LGYLWTYX0D1C4Sv1

18. Software & Services Agreement between Debtor and #iGiveCatholic effective July 1, 2017; Addendum to Kimbia Terms of Service, effective August 1, 2017.
19. Software & Services Agreement between Debtor and Wichita Falls Area Community Foundation dated January 1, 2017
20. Master Services Agreement between Debtor and J. Marion Sims Foundation dated October 1, 2017; Trademark License Amendment to Giving Event Agreement effective March 8, 2016; Addendum for The K Foundation J. Marion Sims Foundation effective October 1, 2017; Kimbia SOW 2018 Giving Day effective November 3, 2017.
21. Software & Services Agreement between Debtor and San Angelo Area Foundation effective September 1, 2015; SOW 2018 Giving Day effective October 30, 2017.
22. Software & Services Agreement between Debtor and Community Foundation of Collier County effective October 1, 2015; SOW 2018 Spring Giving Day Renewal effective October 5, 2017
23. Master Service Agreement between Debtor and Connecticut Community Foundation effective October 1, 2017; SOW 2018 Spring Giving Day Renewal effective October 13, 2017
24. Software & Services Agreement between Debtor and Community Foundation of Abilene effective October 1, 2016; SOW 2018 Abilene Gives Giving Day Renewal effective November 21, 2017.
25. Software & Services Agreement between Debtor and Xavier University of Louisiana effective March 1, 2017; SOW Xavier University - 2018 "Give Love" Campaign effective December 5, 2017.
26. Software & Services Agreement between Debtor and Community Foundation Washington County MD, Inc. effective November 1, 2015; SOW 2018 Giving Day Renewal effective September 18, 2017
27. Kimbia Software & Services Agreement with Community Foundation Santa Cruz County effective September 1, 2015; SOW 2018 Spring Giving Day and Peer to Peer Refresh effective August 25, 2017.
28. Software & Services Agreement between Debtor and Tahoe Truckee Community Foundation effective September 1, 2017
29. Software & Services Agreement between Debtor and Paso del Norte Charitable Foundation effective March 1, 2017
30. Software & Services Agreement between Debtor and Unity Foundation of La Porte County, effective May 1, 2017
31. Master Service Agreement between Debtor and Telluride Foundation effective October 1, 2017; SOW 2017 Giving Day effective October 26, 2017.
32. Software & Services Agreement between Debtor and Big Give Houston c/o Megan Ortiz effective January 28, 2017; Software & Services Agreement Addendum A between Debtor and Big Give Houston effective May 1, 2017; Addendum for the K Foundation between Debtor and Big Give Houston effective October 1, 2017
33. Software & Services Agreement between Debtor and Midland Area Community Foundation effective October 1, 2015; SOW 2018 Giving Day effective December 19, 2017
34. Software & Services Agreement between Debtor and Parkersburg Area Community Foundation effective October 1, 2015
35. Master Service Agreement between Debtor and Community Foundation of Sarasota County effective October 1, 2017; SOW 2018 Giving Day Professional Package and Custom Leaderboards effective November 11, 2017
36. Software & Services Agreement between Debtor and Greater Green Bay Community Foundation Inc. effective June 1, 2017; SOW Greater Green Bay Community Foundation Inc. effective June 19, 2017
37. Software & Services Agreement between Bay Area Community Foundation Inc. effective December 1, 2015; SOW 2018 Giving Day effective November 20, 2017

38. Sales Contract between Debtor and The Community Foundation Serving Richmond and Central Virginia effective March 1, 2015; SOW 2017 Christmas Mother Campaign Set-up effective July 24, 2017
39. Software & Services Agreement between Debtor and United Way of Delaware effective January 1, 2017
40. Software & Services Agreement between Debtor and Luther Seminary effective August 1, 2017
41. Master Services Agreement between Debtor and Family First Health effective October 1, 2017; SOW Giving Day Standard Package Template effective October 23, 2017
42. Software & Services Agreement between Debtor and Community Foundation of Middle Tennessee effective October 1, 2015
43. Software & Services Agreement between Debtor and Community Foundation of the Ohio Valley effective September 1, 2015; Kimbia SOW 2018 Giving Day effective December 13, 2017.
44. Software & Services Agreement between Debtor and Trout Unlimited effective March 1, 2017; Addendum A - Trout Unlimited effective May 30, 2017; Addendum for The K Foundation - Trout Unlimited effective October 19, 2017
45. Kimbia Order Form between Debtor and Gulf Coast Community Foundation, effective July 1, 2012
46. Software & Services Agreement between Debtor and Idaho Housing & Finance Association effective November 1, 2015; SOW 2017 Giving Campaign effective September 28, 2017
47. Master Services Agreement between Debtor and American's Future Foundation effective January 1, 2018
48. Software & Services Agreement between Debtor and American Center for Law and Justice effective November 1, 2015
49. Software & Services Agreement between Debtor and American Enterprise Institute effective November 1, 2015
50. Master Services Agreement between Debtor and Austin Community Foundation effective November 1, 2017
51. Master Services Agreement between Debtor and Bicycle Sport Shop effective January 1, 2018
52. Master Service Agreement between Debtor and Blue Grass Community Foundation effective October 1, 2017; Addendum for Kimbia Merchant Services with Blue Grass Community Foundation effective October 9, 2017.
53. Racing Sales Contract between Debtor and Bounce effective date September 1, 2014; Business Referral Agreement between Debtor and Bounce effective August 17, 2010
54. Master Services Agreement between Debtor and The Chicago Bar Foundation effective November 1, 2017
55. Master Services Agreement between Debtor and Council for Life effective October 1, 2017
56. Software & Services Agreement between Debtor and Crenshaw Christian Center effective December 1, 2015
57. Master Services Agreement between Debtor and Federation for American Immigration Reform effective January 1, 2018
58. Master Services Agreement between Debtor and ForAmerica, Inc. effective October 1, 2017
59. Order Form between Debtor and Gateway Community Church effective August 1, 2011
60. Master Services Agreement between Debtor and Heartland Institute effective September 1, 2017
61. Software & Services Agreement between Debtor and Local 909 The Bridge (KCPT) effective December 1, 2015
62. Master Services Agreement between Debtor and KCSM TV & FM effective December 1, 2017; SOW Peer-to-Peer Fundraising Standard Package effective December 18, 2017
63. Software & Services Agreement between Debtor and KLRU effective January 1, 2016
64. Software & Services Agreement between Debtor and LL Texas USA effective February 1, 2017
65. Master Services Agreement between Debtor and Mental Health America of Greater Dallas effective November 1, 2017

66. Software & Services Agreement between Debtor and Neighborhood Centers effective June 1, 2016
67. Master Services Agreement between Debtor and Susan Cohan Colon Cancer Foundation effective October 1, 2017
68. Master Services Agreement between Debtor and Texas Network of Youth Services effective January 1, 2018
69. Software & Services Agreement between Debtor and University of Montana Foundation effective June 1, 2016; Addendum A - University of Montana Foundation effective July 1, 2017
70. Sales Contract between Debtor and WGBH Educational Foundation effective July 1, 2015; Debtor intends to enter into a Master Services Agreement with WGBH Education Foundation on or about the date hereof. This agreement includes a \$25,000 payment credit.
71. Master Services Agreement between Debtor and YMCA of Centre County effective November 1, 2017
72. Software & Services Agreement between Debtor and Rocky Mountain Public Broadcasting Inc. effective July 1, 2015; Addendum A - Rocky Mountain Public Broadcasting Network Inc effective August 1, 2017
73. Software & Services Agreement between Debtor and The Boston Foundation effective September 1, 2017
74. Order Form between Debtor and Roanoke Conference effective May 1, 2012
75. YMCA Order Form between Debtor and YMCA of Sweickley effective July 1, 2012
76. Master Services Agreement between Debtor and West Texas Endurance effective September 1, 2017
77. Sales Contract between Debtor and YMCA of Central Ohio effective December 1, 2013
78. Software & Services Agreement between Debtor and New Hampshire Public Broadcasting effective February 1, 2016
79. Software & Services Agreement between Debtor and CASA of Travis County effective April 1, 2016
80. Master Services Agreement between Debtor Southern Oregon Public Television effective January 1, 2018
81. Software & Services Agreement between Smithsonian National Air & Space Museum effective December 1, 2015 and Amendment or Solicitation/Modification of Contract No. T13CC10296
82. Master Services Agreement between YMCA of San Francisco effective August 1, 2017
83. Sales Contract between Debtor and FLTI, dba FamilyLife effective November 1, 2013
84. Master Services Agreement between Debtor and Young America's Foundation effective August 1, 2017
85. Sales Contract between Debtor and Northwestern Memorial Foundation effective December 1, 2015; Sales Contract between Debtor and Northwestern Memorial Foundation effective August 1, 2017 revised from December 1, 2015
86. Software & Services Agreement between Debtor and Alliance Against Domestic Abuse effective June 1, 2016
87. Master Services Agreement between Debtor and LeSEA Global Feed the Hungry effective December 1, 2017
88. Sales Contract between Debtor and Central Indiana Community Foundation effective May 1, 2014; Addendum A - Central Indiana Community Foundation effective June 20, 2017
89. Software & Services Agreement between Debtor and CaringBridge effective December 1, 2015
90. Master Services Agreement between Debtor and NHL Interactive Cyberenterprises, LLC Effective September 12, 2014; Amendment No. 1 to Master Services Agreement between NHL Interactive Cyberenterprises, LLC , National Hockey League Foundation and Debtor, effective July 1, 2017; Statement of Work No. 2 between NHL Interactive Cyberenterprises, LLC , National Hockey League Foundation and Debtor, effective July 1, 2017
91. Sales Contract between Debtor and American Red Cross effective September 19, 2014

92. Master Services Agreement between Debtor and City School effective October 1, 2017
93. Software & Services Agreement between Debtor and Public Broadcasting Foundation of NW Ohio effective November 1, 2015
94. Sales Contract between Debtor and Arthritis Foundation effective November 1, 2014
95. Sales Contract between Debtor and Safe Horizon effective November 1, 2014
96. Master Services Agreement between Debtor and University of Iowa Foundation effective December 1, 2017 and Addendum to MSA-University of Iowa Foundation effective December 8, 2017; SOW One Day for Iowa – 2018 Giving Day effective December 8, 2017
97. Sales Contract between Debtor and JFCS of SF, Marin, the Peninsula and Sonoma effective December 1, 2014
98. Software & Services Agreement between Debtor and The Gazelle Foundation effective March 1, 2016
99. Kimbia Sales Contract with Charles Darwin Foundation for the Galapagos Islands effective May 1, 2015; Kimbia Inter-Entity Merchant Account Usage Release between International Community Foundation, Charles Darwin Foundation and Kimbia Inc. effective May 11, 2015
100. Master Services Agreement between Debtor and YMCA of Fort Worth effective November 1, 2017
101. Master Services Agreement between Debtor and Community Foundation of Greater Memphis effective September 1, 2017
102. Master Services Agreement between Debtor and The Cradle Foundation effective October 1, 2017
103. Master Services Agreement between Debtor and Goose Island Beer Co. effective October 1, 2017
104. Master Services Agreement between Debtor and United Way of the Columbia-Willamette effective November 1, 2017
105. Master Services Agreement between Debtor and The San Luis Obispo YMCA effective October 1, 2017
106. Software & Services Agreement between Debtor and CHI Foundations of Texas effective July 1, 2017
107. Master Services Agreement between Debtor and The Women's Center of Tarrant County effective December 1, 2017
108. Software & Services Agreement between Debtor and Look Good Feel Better effective August 1, 2017
109. Software & Services Agreement between Debtor and Hope of the Valley Rescue Mission effective June 1, 2016
110. Software & Services Agreement between Debtor and Young Men's Christian Association of Metropolitan Washington effective August 1, 2016
111. Software & Services Agreement between Debtor and Young Men's Christian Association of Wichita Falls effective August 1, 2016
112. Software & Services Agreement between Debtor and Young Men's Christian Association of Greater Dayton effective November 1, 2016; Statement of Work Peer-to-Peer 2017 Update with YMCA of Greater Dayton effective November 6, 2017
113. Software & Services Agreement between Debtor and Williams Syndrome Association effective December 1, 2016
114. Software & Services Agreement between Debtor and 12by12by12, Inc. effective January 1, 2017
115. University of Florida Foundation Inc. Purchase Order and Kimbia Software & Services Agreement between Debtor and University of Florida Foundation effective February 1, 2017
116. Software & Services Agreement between Debtor and Rappahannock Area YMCA effective March 1, 2017
117. Software & Services Agreement between Debtor and Hyundai Hope on Wheels/White Hat Agency effective April 1, 2017

118. Software & Services Agreement between Debtor and Archdiocese of Galveston-Houston effective July 1, 2017
119. Kimbia Statement of Work Steps for Students Set-up and Configuration effective July 11, 2017; Addendum to Kimbia Terms of Service effective July 11, 2017; Addendum for The K Foundation - Archdiocese of Galveston and Houston effective August 8, 2017
120. Master Services Agreement between Debtor and The Boston Foundation - The Giving Common effective September 1, 2017
121. Master Services Agreement between Debtor and The Greater Cincinnati Foundation effective October 1, 2017; Statement of Work Peer-to-Peer Fundraising and Everyday Giving Standard Package Template effective October 18, 2017
122. OEM Agreement between Debtor and Sage Software, Inc., dated March 15, 2010, as amended September 26, 2012 (Abila/Community Brands).
123. Sales Contract between Debtor and United Way of Westchester and Putnam, Inc., effective January 1, 2015.
124. Master Services Agreement between Debtor, Project Management Institute and Education Fund ("PMIEF"), effective December 12, 2013; Job Order Form with PMIEF, dated December 12, 2013.
125. James Madison University Commonwealth of Virginia Standard Contract No. UCPJMU4537 effective January 1, 2016
126. Scope of Work between Debtor and Orange County Community Foundation effective October 12, 2012.
127. MicroEdge Order Document 2012-10513 with Arizona Community Foundation effective June 14, 2012; Kimbia SOW STO Form Update and Annual Support 2018 effective October 31, 2017
128. MicroEdge Order Document 2016 - 34922 with Catholic Community Foundation of San Diego effective June 30, 2013
129. MicroEdge Order Document 2013 - 15587 with Community Foundation for Southeast Michigan effective July 31, 2013
130. Software and Services Agreement between Debtor and Community Foundation of Greater New Haven, effective December 1, 2016; MicroEdge Order Document 2011 - 8139 with The Community Foundation for Greater New Haven effective January 17, 2012
131. MicroEdge Order Document 2013-18445 with BMO Harris Bank National Association effective December 12, 2013
132. MicroEdge Order Document 2012-10715 with The Dallas Foundation effective June 18, 2012
133. MicroEdge Order Document 2012-9028 with The Greater Houston Community Foundation effective February 17, 2012
134. MicroEdge Order Document 2012-8904 with Greater Kansas City Community Foundation effective June 5, 2012
135. MicroEdge Order Document 2013-15921 with The Greater New Orleans Foundation effective June 26, 2013
136. MicroEdge Order Document 2013 - 15931 with Incourage Community Foundation effective July 1, 2013
137. MicroEdge Order Document 2014 - 21780 with International Community Foundation effective May 28, 2014
138. MicroEdge Order Document 2011-5701 with Porter County Community Foundation effective December 20, 2011
139. MicroEdge Order Document 2011-8465 with The Rhode Island Foundation effective June 12, 2012
140. MicroEdge Order Document 2012 - 11514 with Unity Foundation of LaPorte County effective September 7, 2012

## **Vendor Agreements**

1. Joint Marketing Agreement between Debtor and MicroEdge, LLC, dated September 9, 2011; Amendment to Joint Marketing Agreement, dated October 1, 2012; Addendum E, dated January 1, 2012.
2. Engagement Agreement between Debtor and A-LIGN, dated July 17, 2017.
3. Consulting Agreement between Debtor and Cecropia Solutions, LLC, dated May 23, 2012; Statement of Work dated June 7, 2012; Statement of Work dated September 28, 2012; Statement of Work dated June 5, 2013; Statement of Work dated September 24, 2013; Statement of Work dated February 3, 2014; Statement of Work dated March 3, 2015.
4. Memorandum of Agreement between Debtor and Greater Horizons, dated April 17, 2017.
5. Master Services Agreement between Debtor and Rackspace US, Inc., dated August 27, 2008.
6. Salesforce Master Subscription Agreement, dated September 12, 2017; Salesforce Order Form with Debtor dated June 15, 2015
7. Professional Services Agreement between Debtor and Gist Labs, effective November 7, 2017.
8. Terms of Engagement between Debtor and Zeidman Development Limited, dated February 17, 2017.
9. Master Alliance Agreement between Debtor and GuideStar USA, Inc., effective September 5, 2012. Debtor provided termination notice to GuideStar USA on December 6, 2017.
10. Three-Party Escrow Service Agreement between Debtor, Sage Software, Inc. and Iron Mountain Intellectual Property Management, Inc., dated May 12, 2010.



## Schedule 1.1(a)(ii)

### Purchased Intellectual Property

#### *Patents*

Debtor has the following patents, each of which was filed in the U.S.

1. Patent No. 9,819,667 System and method for determining use of non-human users in a distributed computer network environment
2. Patent No. 9,678,643 Secure online communication through a widget on a web page
3. Patent No. 9,626,680 System and method for detecting malicious payment transaction activity using aggregate views of payment transaction data in a distributed network environment
4. Patent No. 9,600,651 System and method for determining use of non-human users in a distributed computer network environment
5. Patent No. 9,348,494 Secure online communication through a widget on a web page
6. Patent No. 9,305,297 Secure online communication through a widget on a web page
7. Patent No. 8,370,749 Secure online communication through a widget on a web page
8. Pending Patent Application No. 15/782,276, filed on October 12, 2017
9. Pending Patent Application No. 15/446,829, filed on March 1, 2017 System and method for detecting malicious payment transaction activity using aggregate views of payment transaction data in a distributed network environment

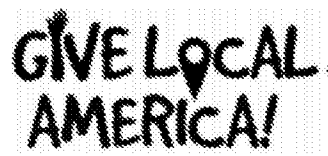
#### *Registered Trademarks*

##### Canada

Giving Power® – Registration Number: TMA824472

##### United States

KIMBIA®– Registration Number: 3491449



®– Registration Number: 4476279

#### *Domain Names*

Kimbia.com

#### *Software Platform*

Debtor's operating platform, including all software used by Debtor to provide services to its customers, all data used in or related to the Debtor's operating platform, including but not limited to, customer data for active projects with customers, customer data from completed projects, and data analytics, and trade secrets within the platform.

**Schedule 1.1(a)(vi)**

1. Debtor computers that are used by Debtor employees who will be employed by Buyer immediately following the Closing.
2. The following servers:
  - a. Apple – XSVR-206-000-R-J4C-L4W-D32-R6F-JYJ-2VZ-N
  - b. Apple – XSVR-106-000-R-LZ7-LDQ-PWJ-RBD-JLB-2HD-2
  - c. Dell – 5L44KN1
  - d. Dell – 6KQYNN1

**Schedule 1.1(a)(vii)**

None.

**SCHEDULE 1.1(B)**

**None.**

## **EXHIBIT A**

### **(Collateral Description)**

All personal property of Debtor whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

- (a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), financial assets, general intangibles (including patents, trademarks, copyrights, goodwill, payment intangibles, domain names, and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;
- (b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the North Carolina Uniform Commercial Code, as amended or supplemented from time to time, including revised Division 9 of the Uniform Commercial Code-Secured Transactions; and
- (c) To the extent not included in the foregoing, any and all Negotiable Collateral and Intellectual Property Collateral, each as defined in the Loan Documents.

**EXHIBIT B**

**(UCC-1)**

**Attached**

**DEBTOR: KIMBIA, INC.**

**SECURED PARTY: PACIFIC WESTERN BANK**

**EXHIBIT A**

**COLLATERAL DESCRIPTION ATTACHMENT TO UCC FINANCING STATEMENT**

All personal property of Borrower (herein referred to as "Borrower" or "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), financial assets, general intangibles (including patents, trademarks, copyrights, goodwill, payment intangibles, domain names, and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the North Carolina Uniform Commercial Code, as amended or supplemented from time to time, including revised Division 9 of the Uniform Commercial Code-Secured Transactions.

## UCC FINANCING STATEMENT

### FOLLOW INSTRUCTIONS

|   |  |
|---|--|
| A. NAME & PHONE OF CONTACT AT FILER (optional)<br>Corporation Service Company 1-800-858-5294  |  |
| B. E-MAIL CONTACT AT FILER (optional)<br>SPRFiling@cscinfo.com  |  |
| C. SEND ACKNOWLEDGMENT TO: (Name and Address)<br>115341402 - 354710 - 4/29/2016<br>Corporation Service Company<br>801 Adlai Stevenson Drive<br>Springfield, IL 62703<br>Filed In: Delaware (S.O.S.) |  |

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

|                                      |  |                     |                               |  |
|--------------------------------------|--|---------------------|-------------------------------|--|
| 1a. ORGANIZATION'S NAME KIMBIA, INC. |  |                     |                               |  |
| OR                                   | 1b. INDIVIDUAL'S SURNAME                 | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX                                 |
| 1c. MAILING ADDRESS                  | 2500 BEE CAVE RD., BUILDING 2, SUITE 230 | CITY<br>AUSTIN      | STATE<br>TX                   | POSTAL CODE<br>78746<br>COUNTRY<br>USA |

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

|                         |                          |                     |                               |                        |
|-------------------------|--------------------------|---------------------|-------------------------------|------------------------|
| 2a. ORGANIZATION'S NAME |                          |                     |                               |                        |
| OR                      | 2b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX                 |
| 2c. MAILING ADDRESS     |                          | CITY                | STATE                         | POSTAL CODE<br>COUNTRY |

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

|  |                                |                     |                               |  |
|--|--------------------------------|---------------------|-------------------------------|--|
| 3a. ORGANIZATION'S NAME PACIFIC WESTERN BANK |                                |                     |                               |  |
| OR   | 3b. INDIVIDUAL'S SURNAME       | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX                                 |
| 3c. MAILING ADDRESS                          | 406 Blackwell Street, Ste. 240 | CITY<br>Durham      | STATE<br>NC                   | POSTAL CODE<br>27701<br>COUNTRY<br>USA |

4. COLLATERAL: This financing statement covers the following collateral:

See Exhibit A attached hereto for collateral description.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA: :S/S Delaware

PATENT

115341402

REEL: 051042 FRAME: 0133



**EXHIBIT C**  
**(Ancillary Agreement)**

**Attached**

**EXHIBIT D**  
**(Seller Ancillary Agreement)**

**Attached**

**EXHIBIT E**

**(Bill of Sale and Assignment and Assumption Agreement)**

**Attached**

**EXHIBIT F**

**(Domain Name Assignment Agreement)**

**Attached**

**Exhibit G**  
**(Patent Assignment Agreement)**

**Attached**

**EXHIBIT H**  
**(Trademark Assignment Agreement)**

**Attached**

**EXHIBIT I**

**(Notifications of Disposition of Collateral)**

**Attached**

**NOTIFICATION OF DISPOSITION OF COLLATERAL**  
(Uniform Commercial Code Section 9-613)

Date: January 11, 2018

**VIA OVERNIGHT DELIVERY AND EMAIL (WHERE INDICATED)**

To: KIMBIA, INC.  
2500 BEE CAVE RD  
BLDG 2, SUITE #230  
AUSTIN, TX 78746  
  
Attn: Mark Perkins, CEO  
  
Email: mark@kimbia.com

From: PACIFIC WESTERN BANK, successor to SQUARE 1 BANK ("Secured Party")  
406 Blackwell Street, Suite 240  
Durham, North Carolina 27701  
Fax: (919) 314-3080  
  
901 S. Mopac Expressway, #420  
Austin, Texas 78746  
Fax: (512) 439-2829

Name of Debtor: Kimbia, Inc.  
2500 Bee Cave Rd.  
Bldg. 2, Suite #230  
Austin, TX 78746

We refer to that certain Loan and Security Agreement by and between KIMBIA, INC. ("Debtor") and PACIFIC WESTERN BANK, a California state chartered bank, as successor to Square 1 Bank ("Secured Party") dated April 28, 2016, (as amended from time to time, and together with related agreements, the "Agreement"). All capitalized terms used herein without definition shall have the respective meanings assigned to such terms in the Agreement.

**NOTICE IS HEREBY GIVEN THAT** Secured Party will sell or otherwise dispose of some or all the following collateral (the "Collateral"):

All right, title, and interest in the personal property of Debtor, including without limitation the assets and Collateral described and defined on Exhibit A hereto,

privately in one or more transactions sometime on or after January 21, 2018.

**THE DISPOSITION OF THE COLLATERAL WILL BE AS IS, WHERE IS AND WITH ALL FAULTS, AND NO REPRESENTATION OR WARRANTY IS OR WILL BE MADE AS TO THE COLLATERAL. THERE IS NO WARRANTY RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT, OR THE LIKE IN THIS DISPOSITION. SECURED PARTY MAY DISPOSE OF ALL OF THE COLLATERAL IN ONE SALE, OR MAY DISPOSE OF COLLATERAL IN A SERIES OF SALES.**

The disposition will be without prejudice to the rights and remedies which Secured Party now has or may hereafter acquire against the Debtor and any and all guarantors of the obligations of Debtor, all of which are hereby expressly reserved. This Notice is without prejudice to Secured Party's right to proceed against Collateral by other methods, including (but not limited to) the direct collection of accounts, general intangibles and other sums owing to the Debtor.

We will provide Debtor with an accounting of the unpaid indebtedness secured by the property that we intend to sell or otherwise dispose of. You may request an accounting by calling us at (919) 597-7493.

**ALL OF SECURED PARTY'S RIGHTS ARE EXPRESSLY RESERVED.**



PACIFIC WESTERN BANK, successor to  
SQUARE 1 BANK

By

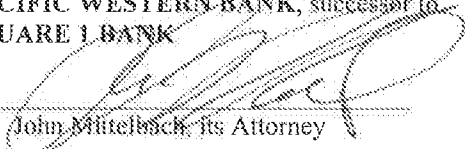
  
John Mitelsch, its Attorney

Exhibit A

Collateral

All personal property of Debtor whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), financial assets, general intangibles (including patents, trademarks, copyrights, goodwill, payment intangibles, domain names, and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the North Carolina Uniform Commercial Code, as amended or supplemented from time to time, including revised Division 9 of the Uniform Commercial Code-Secured Transactions; and

LAW OFFICES  
**LEVY, SMALL & LALLAS**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
815 MORAGA DRIVE  
LOS ANGELES, CALIFORNIA 90049-1633  
TELEPHONE (310) 471-3000  
FACSIMILE (310) 471-7990

STEVEN G. SMALL\*  
TOM LALLAS\*  
LEO D. PLOTKIN\*  
WILLIAM J. WIPPICH  
ANGEL F. CASTILLO  
MARK D. HURWITZ  
IANE SAENAM  
MICHAEL MERGENTHALER  
JOHN MITTELBACH  
CHRISTIAN A. JORDAN

WALTER R. MITCHELL,  
OF COUNSEL

\*A PROFESSIONAL CORPORATION

IN REPLY PLEASE REFER TO:

**NOTIFICATION OF DISPOSITION OF COLLATERAL**  
(Uniform Commercial Code Section 9-613)

Date: January 5, 2018

**VIA OVERNIGHT DELIVERY AND EMAIL (WHERE INDICATED)**

To: KIMBIA, INC.  
2500 BEE CAVE RD  
BLDG 2, SUITE #230  
AUSTIN, TX 78746

Attn: Mark Perkins, CEO

Email: mark@kimbia.com

From: PACIFIC WESTERN BANK, successor to SQUARE 1 BANK ("Secured Party")  
406 Blackwell Street, Suite 240  
Durham, North Carolina 27701  
Fax: (919) 314-3080  
  
901 S. Mopac Expressway, #420  
Austin, Texas 78746  
Fax: (512) 439-2829

Name of Debtor: Kimbia, Inc.  
2500 Bee Cave Rd.  
Bldg. 2, Suite #230  
Austin, TX 78746

We refer to that certain Loan and Security Agreement by and between KIMBIA, INC. ("Debtor") and PACIFIC WESTERN BANK, a California state chartered bank, as successor to Square 1 Bank ("Secured Party") dated April 28, 2016, (as amended from time to time, and together with related agreements, the "Agreement"). All capitalized terms used herein without definition shall have the respective meanings assigned to such terms in the Agreement.

**NOTICE IS HEREBY GIVEN THAT** Secured Party will sell or otherwise dispose of some or all the following collateral (the "Collateral"):

All right, title, and interest in the personal property of Debtor, including without limitation the assets and Collateral described and defined on Exhibit A hereto,

privately in one or more transactions sometime on or after January 16, 2018.

**THE DISPOSITION OF THE COLLATERAL WILL BE AS IS, WHERE IS AND WITH ALL FAULTS, AND NO REPRESENTATION OR WARRANTY IS OR WILL BE MADE AS TO THE COLLATERAL. THERE IS NO WARRANTY RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT, OR THE**

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LEVY, SMALL & LALLAS

January 5, 2018  
Page 2

**LIKE IN THIS DISPOSITION, SECURED PARTY MAY DISPOSE OF ALL OF THE COLLATERAL IN ONE SALE, OR MAY DISPOSE OF COLLATERAL IN A SERIES OF SALES.**

The disposition will be without prejudice to the rights and remedies which Secured Party now has or may hereafter acquire against the Debtor and any and all guarantors of the obligations of Debtor, all of which are hereby expressly reserved. This Notice is without prejudice to Secured Party's right to proceed against Collateral by other methods, including (but not limited to) the direct collection of accounts, general intangibles and other sums owing to the Debtor.

We will provide Debtor with an accounting of the unpaid indebtedness secured by the property that we intend to sell or otherwise dispose of. You may request an accounting by calling us at (860) 255-5208.

**ALL OF SECURED PARTY'S RIGHTS ARE EXPRESSLY RESERVED.**

**PACIFIC WESTERN BANK, successor to  
SQUARE 1 BANK**

By /s/ John Mittelbach  
John Mittelbach, its Attorney

33839

January 5, 2018

Page 3

Exhibit A

**Collateral**

All personal property of Debtor whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), financial assets, general intangibles (including patents, trademarks, copyrights, goodwill and payment intangibles and software), goods (including fixtures), instruments (including promissory note), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the California Uniform Commercial Code, as amended or supplemented from time to time, including revised Division 9 of the Uniform Commercial Code-Secured Transactions; and

(c) to the extent not included in the foregoing, any and all Negotiable Collateral and Intellectual Property, each as defined in the Agreement.