TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	04/29/2013

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
MYPUBLISHER, INC.		04/29/2013	CORPORATION: NEW YORK

RECEIVING PARTY DATA

Name:	SHUTTERFLY, INC.
Street Address:	2800 Bridge Parkway
City:	Redwood City
State/Country:	CALIFORNIA
Postal Code:	94065
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 14

Property Type	Number	Word Mark
Registration Number:	3545807	BOOKMAKER
Registration Number:	3436018	FINALLY, A BETTER WAY TO MAKE PHOTO ALBU
Serial Number:	85755342	KEEPSHOT
Serial Number:	77147636	MYBOOK
Registration Number:	3454859	MYBOOKSHELF
Registration Number:	2674783	MYPUBLISHER
Registration Number:	2658767	MYPUBLISHER
Registration Number:	2986529	MYPUBLISHER
Registration Number:	3990717	MY PUBLISHER
Serial Number:	85798878	THISTLE & YORK
Registration Number:	3451002	HOW FAST THEY GROW
Registration Number:	3492240	HOW FAST THEY GROW
Registration Number:	3929279	HOW FAST TIME FLIES

OP $365.00 3545807

Registration Number:	3363970	DIGI-SCRAPBOOK

CORRESPONDENCE DATA

Fax Number: 4084141076

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

Phone: 408-414-1202
Email: trademarks@hptb-law.com
Correspondent Name: Hickman Palermo Truong Becker,et al. LLP
Address Line 1: 1 Almaden Boulevard - Floor 12
Address Line 4: San Jose, CALIFORNIA 95113

ATTORNEY DOCKET NUMBER:	60248-0010
NAME OF SUBMITTER:	Christopher J. Palermo
Signature:	/ChristopherJPalermo/
Date:	10/03/2013

Total Attachments: 73
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EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

SHUTTERFLY, INC.,

GUINNESS EXPRESSIONS ACQUISITION SUB, INC.,

MYPUBLISHER, INC.,

AND

CARL NAVARRE, JR. AS THE SHAREHOLDERS' AGENT

DATED AS OF APRIL 29, 2013

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of April 29, 2013 (the "Agreement Date"), by and among Shutterfly, Inc., a Delaware corporation ("Parent"), Guinness Expressions Acquisition Sub, Inc., a New York corporation and a wholly owned subsidiary of Parent ("Merger Sub"), MyPublisher, Inc., a New York corporation (the "Company"), and Carl Navarre, Jr., solely in his capacity as the shareholders' agent (the "Shareholders' Agent"). Certain other capitalized terms used herein are defined in Exhibit A.

RECITALS

A. The board of directors of the Company (the "Board of Directors") and the boards of directors of Parent and Merger Sub each deems it advisable and in the best interests of each such corporation and their respective shareholders that the Company and Parent engage in a business combination.

B. The Board of Directors and the boards of directors of Parent and Merger Sub each have approved this Agreement, the merger (the "Merger") of Merger Sub with and into the Company in accordance with the New York Business Corporation Law, as amended (the "NYBCL"), and the other transactions contemplated by this Agreement (the Merger and such other transactions, collectively, the "Transactions"), upon the terms and subject to the conditions set forth in this Agreement, and the Board of Directors and the board of directors of Merger Sub each have unanimously adopted this Agreement and determined to recommend to their respective shareholders the adoption of this Agreement in accordance with the NYBCL. Upon consummation of the Merger, Merger Sub will cease to exist, and the Company will become a wholly owned subsidiary of Parent.

C. Concurrently with the execution of this Agreement, and as a condition and inducement to Parent's and Merger Sub's willingness to enter into this Agreement, each of the Key Employees has executed Parent's form of (1) employment offer letter, an employee invention assignment and confidentiality agreement and an arbitration agreement (collectively, the "Employment Offer Documents") and (2) a non-competition/non-solicitation agreement (a "Non-Competition Agreement"), each to become effective upon the Closing. Also concurrently with the execution of this Agreement, and as a condition and inducement to Parent's and Merger Sub's willingness to enter into this Agreement, Carl Navarre, Jr. has executed Parent's form of (1) resignation letter and (2) a Non-Competition Agreement, each to become effective upon the Closing.

D. Immediately following the execution and delivery of this Agreement, the Company shall seek to obtain and deliver to Parent a copy of a written consent in substantially the form attached hereto as Exhibit B-1 (a "Written Consent") executed by the Company Shareholders identified on Exhibit B-2 (the "Consenting Shareholders"), evidencing the obtainment of the Company Shareholder Approval.

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

ARTICLE I
THE MERGER

1.1 The Merger.

(a) Merger of Merger Sub into the Company. Upon the terms and subject to the conditions set forth herein, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (referred to herein as the "Surviving Corporation") and as a wholly owned subsidiary of Parent.

(b) Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the NYBCL.

(c) Closing. Upon the terms and subject to the conditions set forth herein, the closing of the Transactions (the "Closing") shall take place at the offices of Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California, or at such other location as Parent and the Company agree, at (i) 10:00 a.m. local time on the Agreement Date or such other date as may be agreed by Parent and the Company after all of the conditions set forth in Article V of this Agreement have been satisfied or waived (other than those conditions that, by their terms, are intended to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or (ii) such other time and date as Parent and the Company agree. The date on which the Closing occurs is sometimes referred to herein as the "Closing Date."

(d) Effective Time. A certificate of merger satisfying the applicable requirements of the NYBCL in substantially the form attached hereto as Exhibit C (the "Certificate of Merger") shall be duly executed by the Company and, concurrently with or as soon as practicable following the Closing, filed with the Department of State of the State of New York. The Merger shall become effective upon the filing of the Certificate of Merger, executed in accordance with the relevant provisions of the NYBCL, with the Department of State of the State of New York or at such later time as Parent and the Company agree and specify in the Certificate of Merger (the "Effective Time").

(e) Certificate of Incorporation and Bylaws; Directors and Officers. Unless otherwise determined by Parent and the Company prior to the Effective Time:

(i) the certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to read as set forth in the Certificate of Merger, until thereafter amended as provided by the NYBCL;

(ii) Parent and the Company shall take all actions necessary to cause the bylaws of the Surviving Corporation to be amended and restated as of the Effective Time to be identical (other than as to name) to the bylaws of Merger Sub as in effect immediately prior to the Effective Time; and

(iii) Parent and the Company shall take all actions necessary to cause the directors and officers of Merger Sub immediately prior to the Effective Time to be the only directors and officers of the Surviving Corporation immediately after the Effective Time until their respective successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

1.2 Closing Deliveries.

(a) Parent Deliveries. Parent shall deliver to the Company, at or prior to the Closing:

(i) a certificate, dated as of the Closing Date, executed on behalf of Parent

by a duly authorized officer of Parent to the effect that each of the conditions set forth in Section 5.2(a) has been satisfied; and

(ii) the Escrow Agreement, executed by Parent and the Escrow Agent.

(b) Company Deliveries. The Company shall deliver to Parent, at or prior to the Closing:

(i) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Chief Executive Officer, to the effect that each of the conditions set forth in Section 5.3(a) and Section 5.3(c) has been satisfied;

(ii) a certificate, dated as of the Closing Date and executed on behalf of the Company by its duly authorized executive officer, certifying (A) the certificate of incorporation of the Company (the "Certificate of Incorporation") in effect as of the Closing, (B) the bylaws of the Company (the "Bylaws") in effect as of the Closing and (C) the resolutions of the Board of Directors (I) approving this Agreement and the Transactions, (II) adopting this Agreement in accordance with the NYBCL and (III) directing that the adoption of this Agreement be submitted to the Company Shareholders for consideration and recommending that all of the Company Shareholders adopt this Agreement;

(iii) a written opinion from the Company's outside legal counsel in the form attached hereto as Exhibit D, dated as of the Closing Date and addressed to Parent;

(iv) the Escrow Agreement, executed by the Shareholders' Agent;

(v) one or more Written Consents executed by each Consenting Shareholder and such other Company Shareholders as are necessary, when taken together with the Consenting Shareholders, to evidence the obtainment of the Company Shareholder Approval and the Requisite Shareholder Approval;

(vi) evidence satisfactory to Parent of the resignation of each director and officer of the Company in office immediately prior to the Closing as directors and/or officers of the Company, effective as of, and contingent upon, the Closing;

(vii) unless otherwise requested by Parent in writing no less than three Business Days prior to the Closing Date, (A) a true, correct and complete copy of resolutions adopted by the Board of Directors, certified by a duly authorized executive officer of the Company, authorizing the termination of each or all of the Employee Plans that are "employee benefit plans" within the meaning of ERISA, including the Company's 401(k) Plan (the "Company 401(k) Plan"), and (B) an amendment to the Company 401(k) Plan, executed by the Company, that is sufficient to assure compliance with all applicable requirements of the Code and regulations thereunder so that the Tax-qualified status of the Company 401(k) Plan shall be maintained at the time of its termination, with such amendment and termination to be effective as of the date immediately preceding the Closing Date and contingent upon the Closing;

(viii) a certificate from the Department of State of the State of New York and each other State in which the Company is qualified to do business as a foreign corporation, dated as of a recent date prior to the Closing Date, certifying that the Company is in good standing in such State;

(ix) the Spreadsheet completed to include all of the information specified in Section 4.7 in a form reasonably acceptable to Parent and a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, certifying that the Spreadsheet is true, correct and complete;

(x) the Company Closing Financial Certificate;

(xi) FIRPTA documentation, consisting of (A) a notice to the Internal Revenue Service, in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2), in substantially the form attached hereto as Exhibit E-1, dated as of the Closing Date and executed by the Company, together with written authorization for Parent to deliver such notice form to the Internal Revenue Service on behalf of the Company after the Closing, and (B) a FIRPTA Notification Letter, in substantially the form attached hereto as Exhibit E-2, dated as of the Closing Date and executed by the Company;

(xii) the Certificate of Merger, executed by the Company;

(xiii) payoff letters or similar instruments in form and substance reasonably satisfactory to Parent with respect to all Company Debt, which letters provide for the release of all Liens relating to the Company Debt following satisfaction of the terms contained in such payoff letters (including any premiums above the principal amount of such Company Debt or any fees payable in connection with such Company Debt); and

(xiv) executed UCC-2 or UCC-3 termination statements (or any other applicable termination statement) executed by each Person holding a Lien (other than Permitted Liens) in any assets of the Company as of the Closing Date in respect of Company Debt terminating any and all such Liens and evidence reasonably satisfactory to Parent that all such Liens (other than Permitted Liens) shall have been released prior to, or shall be released simultaneously with, the Closing.

Receipt by Parent of any of the agreements, instruments, certificates or documents delivered pursuant to this Section 1.2(b) shall not be deemed to be an agreement by Parent or Merger Sub that the information or statements contained therein are true, correct or complete, and shall not diminish Parent's or Merger Sub's remedies hereunder if any of the foregoing agreements, instruments, certificates or documents are not true, correct or complete.

1.3 Effect on Capital Stock and Options.

(a) Treatment of Company Common Stock and Company Options. Upon the terms and subject to the conditions set forth herein, at the Effective Time, by virtue of the Merger and without any action on the part of any party hereto, Company Shareholder, Company Optionholder or any other Person:

(i) Company Common Stock. Each share of Company Common Stock, whether vested or unvested, held by a Converting Holder immediately prior to the Effective Time (other than Dissenting Shares and shares that are owned by the Company as treasury stock) shall be cancelled and automatically converted into the right to receive, subject to and in accordance with Sections 1.4(a) and 1.4(b), (A) an amount in cash, without interest, equal to the Common Per Share Merger Consideration and (B) subject to Article VII, the right to receive upon release from the Escrow Fund such Converting Holder's Pro Rata Share of the Escrow Fund.

(ii) Company Options. Each Company Option, whether vested or unvested, that is unexpired, unexercised and outstanding immediately prior to the Effective Time shall, without any further action on the part of any holder thereof, be terminated and cancelled at the Effective Time and shall not be assumed by Parent, and no Company Option shall be substituted with any equivalent option or right to purchase any capital of stock of Parent. Upon cancellation thereof, each In the Money Option shall be converted into and represent the right to receive (A) an amount in cash, without interest, with respect to each share of Company Common Stock underlying such In the Money Option, equal to the excess of (I) the Common Per Share Merger Consideration over (II) the per share exercise price of such In the Money Option (collectively, the "Option Settlement Payments") and (B) subject to Article VII, the right to receive upon release from the Escrow Fund such Converting Holder's Pro Rata Share of the Escrow Fund. The amount of cash each Converting Holder holding In the Money Options is entitled to receive for such In the Money Options shall be rounded to the nearest cent and computed after aggregating cash amounts for all In the Money Options held by such Converting Holder and will be reduced by any applicable payroll, income tax or other withholding taxes. Upon cancellation thereof, no payment shall be made with respect to any Company Option that is not an In the Money Option. The Company shall, prior to the Closing, take or cause to be taken all actions, and shall obtain all consents, as may be required to effect the treatment of Company Options pursuant to this Section 1.3(a)(ii).

(b) Treatment of Company Common Stock Owned by the Company. At the Effective Time, all shares of Company Common Stock that are owned by the Company as treasury stock immediately prior to the Effective Time shall be cancelled and extinguished without any conversion thereof or payment of any cash or other property or consideration therefor and shall cease to exist.

(c) Treatment of Merger Sub Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or any other Person, each share of capital stock of Merger Sub that is issued and outstanding immediately prior to the Effective Time shall be converted into and become one share of common stock of the Surviving Corporation (and the shares of Surviving Corporation into which the shares of Merger Sub capital stock are so converted shall be the only shares of the Surviving Corporation's capital stock that are issued and outstanding immediately after the Effective Time). From and after the Effective Time, each certificate evidencing ownership of a number of shares of Merger Sub capital stock will evidence ownership of such number of shares of common stock of the Surviving Corporation.

(d) Adjustments. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to the Company Common Stock occurring after the Agreement Date and prior to the Effective Time, all references herein to specified numbers of shares of any class or series affected thereby, and all calculations provided for that are based upon numbers of shares of any class or series affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

(e) Appraisal Rights. Notwithstanding anything to the contrary contained herein, any Dissenting Shares shall not be converted into the right to receive the applicable portion of the Merger Consideration, but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to any such Dissenting Shares pursuant to the NYBCL. Each holder of Dissenting Shares who, pursuant to the provisions of the NYBCL, becomes entitled to payment thereunder for such shares shall receive payment therefor in accordance with the NYBCL (but only after

the value therefor shall have been agreed upon or finally determined pursuant to such provisions). If, after the Effective Time, any Dissenting Shares shall lose their status as Dissenting Shares, then any such shares shall immediately be deemed to have converted at the Effective Time into the right to receive the applicable portion of the Merger Consideration in respect of such shares as if such shares never had been Dissenting Shares, and Parent shall pay and deliver to the holder thereof, at (or as promptly as reasonably practicable after) the applicable time or times specified in Section 1.4(a), following the satisfaction of the applicable conditions set forth in Section 1.4(a), the applicable portion of the Merger Consideration as if such shares never had been Dissenting Shares. The Company shall provide to Parent (i) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands and any other instruments related to such demands served pursuant to the NYBCL and received by the Company and (ii) the opportunity to consult with the Company with respect to all negotiations and proceedings with respect to such demands under the NYBCL. The Company shall not, except with the prior written consent of Parent, or as otherwise required under the NYBCL, (x) make any payment or offer to make any payment with respect to, or settle or offer to settle, any claim or demand in respect of any Dissenting Shares or (y) waive any failure to timely deliver a written demand for appraisal or timely take any other action to perfect appraisal rights in accordance with the NYBCL. Subject to Section 7.2, the payout of consideration under this Agreement to the Converting Holders (other than in respect of Dissenting Shares, which shall be treated as provided in this Section 1.3(e) and under the NYBCL) shall not be affected by the exercise or potential exercise of appraisal rights or dissenters' rights under the NYBCL by any other Company Shareholder.

(f) Rights Not Transferable. Other than in accordance with Section 1.4(d), the rights of the Company Securityholders under this Agreement as of immediately prior to the Effective Time are personal to each such Company Securityholder and shall not be transferable for any reason other than by operation of law, will or the laws of descent and distribution. Any attempted transfer of such right by any holder thereof (other than as permitted by the immediately preceding sentence) shall be null and void.

(g) No Interest. Notwithstanding anything to the contrary contained herein, no interest shall accumulate on any cash payable in connection with the consummation of the Merger and the other Transactions.

1.4 Payment Procedures.

(a) Surrender of Certificates.

(i) Prior to the Closing , the Company shall mail, or cause to be mailed, to every holder of record of Company Common Stock that was issued and outstanding immediately prior to the Effective Time a letter of transmittal (the "Letter of Transmittal") together with instructions for use of the Letter of Transmittal in effecting the surrender of the certificates that immediately prior to the Effective Time represented issued and outstanding Company Common Stock (the "Certificates") in exchange for the right to receive the applicable portion of the Merger Consideration, each in form and substance reasonably acceptable to Parent and the Company, including an agreement by such holder to be bound by the provisions of Section 1.5 and Article VII and a release of any and all claims against Parent, Merger Sub and the Company (subject to customary exceptions therefrom, including with respect to rights under this Agreement and ordinary earned salary, accrued benefits and reimbursement of accrued expenses). The Letter of Transmittal shall specify that delivery of the Certificates shall be effected, and risk of loss and title to the Certificates shall pass, only upon receipt thereof by Parent (or, in the case of any lost, stolen or destroyed Certificate, compliance with Section 1.4(a)(vii)), together with a properly completed and duly executed Letter of Transmittal, duly executed on behalf of each Person effecting the surrender of such Certificates.

(ii) Prior to the Closing, the Company shall mail, or cause to be mailed, to every holder of In the Money Options that was outstanding immediately prior to the Effective Time the Letter of Transmittal together with instructions for use of the Letter of Transmittal in effecting the surrender of the stock option agreement evidencing such In the Money Options in exchange for the right to receive the applicable portion of the Option Settlement Payments, each in form and substance reasonably acceptable to Parent and the Company, including an agreement by such holder to be bound by the provisions of Section 1.5 and Article VII and a release of any and all claims against Parent, Merger Sub and the Company (subject to customary exceptions therefrom, including with respect to rights under this Agreement and ordinary earned salary, accrued benefits and reimbursement of accrued expenses).

(iii) Prior to the Effective Time, Parent shall cause to be deposited with Wells Fargo Bank, National Association, or another bank or trust company as Parent may choose in its reasonable discretion with the approval of the Shareholders' Agent (not to be unreasonably withheld) (the "Paying Agent") the Merger Consideration less the sum of (A) the Escrow Amount, (B) the Aggregate Exercise Price and (C) the Shareholders' Agent Expense Amount.

(iv) Upon delivery to the Paying Agent of a properly completed and duly executed Letter of Transmittal, together with a Certificate or stock option agreement evidencing In the Money Options, as the case may be, and any other documentation required thereby, (A) the holder of record of such Certificate or In the Money Options shall be entitled to receive the amount of cash that such holder has the right to receive pursuant to Section 1.3(a) in respect of such Certificate or In the Money Options, less such Converting Holder's Pro Rata Share of the Escrow Amount and the Shareholders' Agent Expense Amount, and (B) such Certificate or In the Money Options shall be cancelled.

(v) At the Closing, Parent will instruct the Paying Agent to pay to each Converting Holder by check or wire transfer of same-day funds the aggregate amount of cash payable to such Converting Holder pursuant to Section 1.3(a)(i), less such Converting Holder's Pro Rata Share of the Escrow Amount and the Shareholders' Agent Expense Amount, other than in respect of Dissenting Shares to holders thereof, as promptly as practicable (but in any event no later than two Business Days) following the submission of a Certificate to the Paying Agent and a duly executed Letter of Transmittal by such Converting Holder. Notwithstanding the foregoing, Parent shall cause the Paying Agent to pay, on no later than the Business Day following the Closing Date, to each Converting Holder by check or wire transfer of same-day funds the aggregate amount of cash payable to such Converting Holder pursuant to Section 1.3(a)(i), less such Converting Holder's Pro Rata Share of the Escrow Amount and the Shareholders' Agent Expense Amount, if such Converting Holder has delivered to the Paying Agent a duly executed Letter of Transmittal, together with a Certificate prior to the Closing Date.

(vi) At the Closing, Parent will instruct the Paying Agent to pay to the Surviving Corporation by wire transfer of same-day funds the aggregate amount of cash payable to a Converting Holder pursuant to Section 1.3(a)(ii), less such Converting Holder's Pro Rata Share of the Escrow Amount and the Shareholders' Agent Expense Amount, as promptly as practicable (but in any event no later than two Business Days) following the submission of a stock option agreement evidencing In the Money Options to the Paying Agent and a duly executed Letter of Transmittal by such Converting Holder. Parent shall cause such cash amount to be paid to such Converting Holder through the Surviving Corporation's payroll system in accordance with standard payroll practices on the next scheduled pay day following the second Business Day after the receipt of such cash amount from the Paying Agent (but in any event no later than 30 days thereafter), including any required withholding for applicable Taxes.

(vii) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such document to be lost, stolen or destroyed and, if required by Parent or the Paying Agent, an indemnification agreement with respect to any claim that may be made against it with respect to such document, the Paying Agent will pay in exchange for such lost, stolen or destroyed document the applicable portion of the Merger Consideration payable pursuant to Section 1.3(a), less the applicable portion of such Converting Holder's Pro Rata Share of the Escrow Amount and the Shareholders' Agent Expense Amount.

(b) Escrow Amount. Notwithstanding anything to the contrary in the other provisions of this Article I, Parent shall withhold from each Converting Holder's applicable portion of the Merger Consideration payable to such Converting Holder pursuant to Section 1.3(a) such Converting Holder's Pro Rata Share of the Escrow Amount, and shall deposit the Escrow Amount at the Closing with the Escrow Agent pursuant to Section 7.1. The Escrow Fund shall constitute security for the benefit of Parent (on behalf of itself or any other Indemnified Person) with respect to any Indemnifiable Damages pursuant to the indemnification obligations of the Converting Holders under Article VII, and shall be held and distributed in accordance with Section 7.1. The adoption of this Agreement by the Company Shareholders shall constitute, among other things, approval of the Escrow Amount, the withholding of the Escrow Amount by Parent and the appointment of the Shareholders' Agent.

(c) Transfers of Ownership. If any cash amount payable pursuant to Section 1.3(a) is to be paid to a Person other than the Person to which the Certificate or Company Option surrendered in exchange therefor is registered, it shall be a condition of the payment thereof that such Certificate or Company Option shall be properly endorsed and otherwise in proper form for transfer and that the Person requesting such exchange shall have paid to Parent or any agent designated by it any transfer or other Taxes required by reason of the payment of cash in any name other than that of the registered holder of such Certificate or Company Option, or established to the satisfaction of Parent or any agent designated by it that such Tax has been paid or is not payable.

(d) No Liability. Notwithstanding anything to the contrary in this Section 1.4, none of the Surviving Corporation or any party hereto shall be liable to any Person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Applicable Law.

(e) Unclaimed Consideration. Each holder of a Certificate or Company Option who has not theretofore complied with the exchange procedures set forth in and contemplated by this Section 1.4 shall look only to the Surviving Corporation (subject to abandoned property, escheat and similar Applicable Law) for its claim, only as a general unsecured creditor thereof, to any portion of the Merger Consideration payable pursuant to Section 1.3(a) in respect of such Certificate or Company Option. Notwithstanding anything to the contrary contained herein, if any Certificate or Company Option has not been surrendered prior to the earlier of the first anniversary of the Effective Time and such date on which the applicable portion of the Merger Consideration payable pursuant to Section 1.3(a) in respect of such Certificate or Company Option would otherwise escheat to, or become the property of, any Governmental Entity, any amounts payable in respect of such Certificate or Company Option shall, to the extent permitted by Applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interests of any Person previously entitled thereto.

1.5 No Further Ownership Rights in the Company Common Stock, Company Options. The applicable portion of the Merger Consideration paid or payable following the surrender for exchange of the Certificates and Company Options in accordance with the terms hereof shall be paid or payable in full satisfaction of all rights pertaining to the shares of Company Common Stock represented by such

Certificates or issuable pursuant to such Company Options, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Common Stock or Company Options that were issued and outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate or document or instrument representing a Company Option is presented to the Surviving Corporation for any reason, such Certificate or Company Option shall be cancelled and exchanged as provided in this Article I.

1.6 Company Net Cash Adjustment.

(a) Pursuant to Section 4.10, the Company shall deliver the Company Closing Financial Certificate to Parent not later than two Business Days prior to the Closing Date.

(b) As soon as reasonably practicable following the Closing, and in any event within 60 days after the Closing, Parent shall cause to be prepared and delivered to the Shareholders' Agent a statement (the "Closing Statement") setting forth Parent's calculation of Company Net Cash and Transaction Expenses, in each case, along with reasonable supporting detail to evidence the calculations of such amounts. After the delivery of the Closing Statement in accordance with this Section 1.6(b), at the Shareholders' Agent's request, Parent shall cause the Surviving Corporation, including its Representatives, to reasonably assist the Shareholders' Agent and its Representatives in their review of the Closing Statement and Parent's calculations of Company Net Cash and Transaction Expenses and shall provide to the Shareholders' Agent and its Representatives such information as they may reasonably request and access at all reasonable times to the personnel, properties, working papers, books and records of the Surviving Corporation for such purpose.

(c) Unless the Shareholders' Agent notifies Parent in writing within 60 days after Parent's delivery of the Closing Statement in accordance with Section 1.6(b) of any objection to the computations set forth in the Closing Statement (the "Notice of Objection"), together with reasonable supporting detail with respect to the basis of such objection, the Closing Statement and Parent's calculations of Company Net Cash and Transaction Expenses shall be final and binding for all purposes hereunder. Any Notice of Objection shall specify in reasonable detail the basis for the objections set forth therein and shall include the Shareholders' Agent's calculation of any amounts that are disputed by such Notice of Objection (the "Disputed Amounts") to the extent that such amounts may be determined.

(d) If the Shareholders' Agent provides the Notice of Objection to Parent in accordance with Section 1.6(c), then Parent and the Shareholders' Agent shall confer in good faith for a period of up to 14 days following Parent's receipt of the Notice of Objection in an attempt to resolve any Disputed Amounts set forth in the Notice of Objection, and any resolution by them shall be in writing and shall be final and binding on the parties hereto and the Converting Holders. If, after the 14-day period set forth in this Section 1.6(d), Parent and the Shareholders' Agent cannot resolve any matter set forth in the Notice of Objection, then Parent and the Shareholders' Agent shall engage an independent accounting firm not affiliated with either Parent or the Company (the "Accounting Firm") to review only the Disputed Amounts that are still disputed by Parent and the Shareholders' Agent. After such review and a review of the Surviving Corporation's relevant books and records, the Accounting Firm shall promptly (and in any case within 30 days after its engagement) determine the resolution of the Disputed Amounts. The Accounting Firm shall only resolve the Disputed Amounts by choosing the amounts submitted by either Parent or the Shareholders' Agent or amounts in between. The Surviving Corporation and the Shareholders' Agent shall each furnish to the Accounting Firm such work papers and other documents and information relating to the Disputed Amounts as the Accounting Firm may request. The resolution of the Disputed Amounts by the Accounting Firm shall be final and binding on the parties hereto and the Converting Holders, and the determination of the Accounting Firm shall constitute an arbitral award that is final, binding and unappealable and upon which a judgment may be entered by a court having

jurisdiction thereover. The date on which Company Net Cash and Transaction Expenses are finally determined in accordance with Section 1.6(c) or this Section 1.6(d) is hereinafter referred as to the "Determination Date."

(e) "Adjustment Amount" (positive or negative) means (i) the sum of (A) Company Net Cash as finally determined pursuant to Section 1.6(c) or Section 1.6(d), plus (B) Transaction Expenses as set forth in the Company Closing Financial Certificate and taken into account in the calculation of the Merger Consideration, minus (ii) the sum of (X) Company Net Cash as set forth in the Company Closing Financial Certificate and taken into account in the calculation of the Merger Consideration, plus (Y) Transaction Expenses as finally determined pursuant to Section 1.6(c) or Section 1.6(d). If the Adjustment Amount is a positive number, then Parent shall, or shall cause the Surviving Corporation to, pay to the Paying Agent, for further distribution to the Converting Holders in accordance with his, her or its Pro Rata Share, an aggregate amount in cash equal to the Adjustment Amount, as an adjustment to the Merger Consideration, by wire transfer of immediately available funds to the Paying Agent within three Business Days following the Determination Date. If the Adjustment Amount is a negative number, then, at Parent's election, Parent and the Shareholders' Agent shall instruct the Escrow Agent to pay to Parent an amount in cash equal to the absolute value of the Adjustment Amount, as an adjustment to the Merger Consideration, out of the Escrow Fund, by wire transfer of immediately available funds to an account specified by Parent within three Business Days following the Determination Date.

(f) Parent and the Shareholders' Agent shall each pay their own costs and expenses incurred in connection with the resolution of the Disputed Amounts; provided that the fees, costs and expenses of the Accounting Firm shall be allocated (i) to Parent in the same proportion that the difference between the Accounting Firm's Determination and Parent's Determination bears to the difference between Parent's Determination and the Shareholders' Agent's Determination and (ii) to the Shareholders' Agent in the same proportion that the difference between the Accounting Firm's Determination and the Shareholders' Agent's Determination bears to the difference between Parent's Determination and the Shareholders' Agent's Determination. "Accounting Firm's Determination" means the Accounting Firm's determination of the Disputed Amounts reviewed by the Accounting Firm, "Parent's Determination" means the calculation of such Disputed Amounts submitted to the Accounting Firm by Parent and the "Shareholders' Agent's Determination" means the calculation of such Disputed Amounts submitted to the Accounting Firm by the Shareholders' Agent.

1.7 Tax Consequences. Parent and Merger Sub make no representations or warranties to the Company or to any Company Securityholder regarding the Tax treatment of the Merger, or any of the Tax consequences to the Company or any Company Securityholder of this Agreement, the Merger or the other Transactions or the other agreements contemplated by this Agreement. The Company acknowledges that the Company and the Company Securityholders are relying solely on their own Tax advisors in connection with this Agreement, the Merger and the other Transactions and the other agreements contemplated by this Agreement.

1.8 Certain Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be paid by the party required to pay when due. Parent or the Company Securityholders, as the case may be, shall reimburse the paying party for 50% of such Taxes and fees and expenses related thereto.

1.9 Withholding Rights. Each of Parent, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from any payments of cash pursuant to this Agreement to any Key Employee, any Continuing Employee or any holder of any shares of Company Common Stock, Company Options or Certificates, such amounts in cash as Parent, the Surviving Corporation or the

Paying Agent is required to deduct and withhold with respect to any such payments under the Code or any provision of state, local, provincial or foreign 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 paid to such Persons in respect of which such deduction and withholding was made.

1.10 Transaction Expenses. At the Closing, on behalf of the Company, Parent shall make or cause to be made, by wire transfer of immediately available funds to the account or accounts designated by the Shareholders' Agent in writing no later than two Business Days prior to the Closing Date, a payment in the aggregate equal to the Transaction Expenses, which amount shall be distributed in accordance with the Company Closing Financial Certificate on the Closing Date.

1.11 Shareholders' Agent Expense Amount. Notwithstanding anything to the contrary in the other provisions of this Article I, Parent shall withhold from each Converting Holder's applicable portion of the Merger Consideration payable to such Converting Holder pursuant to Section 1.3(a) such Converting Holder's Pro Rata Share of the Shareholders' Agent Expense Amount, and shall deposit at the Closing an amount equal to the Shareholders' Agent Expense Amount into an account designated by the Shareholders' Agent in writing no later than two Business Days prior to the Closing Date by wire transfer of immediately available funds. The Shareholders' Agent Expense Amount shall be used to fund any expenses incurred by the Shareholders' Agent in the performance of its duties and obligations hereunder. The Shareholders' Agent Expense Amount will be held by the Shareholders' Agent until such time as the Shareholders' Agent determines, in its sole discretion, that the Shareholders' Agent shall not incur any additional expenses in connection with performing its obligations in such capacity under this Agreement. Any portion of the Shareholders' Agent Expense Amount remaining after such time shall be paid by the Shareholders' Agent to the Paying Agent for disbursement to the Converting Holders in accordance with each such Converting Holder's Pro Rata Share. The adoption of this Agreement by the Company Shareholders shall constitute, among other things, approval of the Shareholders' Agent Expense Amount and the withholding of the Shareholders' Agent Expense Amount by Parent.

1.12 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and interest in, to and under, and/or possession of, all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Surviving Corporation are fully authorized, in the name and on behalf of the Company or otherwise, to take all lawful action necessary or desirable to accomplish such purpose or acts, so long as such action is not inconsistent with this Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the disclosure letter of the Company delivered to Parent concurrently with the execution of this Agreement (the "Company Disclosure Schedule") (each of which disclosures shall clearly indicate the Section and, if applicable, the Subsection of this Agreement to which it relates, unless the relevance to other Sections or Subsections of this Agreement is reasonably apparent on its face from the wording of the disclosed exceptions, in which case the disclosed exceptions shall also constitute exceptions to such other Sections or Subsections of this Agreement), the Company represents and warrants to Parent, as of the Agreement Date and as of the Closing Date, as follows:

2.1 Organization, Standing, Power and Subsidiaries.

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. The Company has the corporate or other power

to own, operate and lease its properties and to conduct the 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 a Material Adverse Effect. The Company has and, since its inception has had, no Subsidiaries or any Equity Interests, whether direct or indirect, any company, corporation, limited liability company, partnership, joint venture or other business entity.

(b) Schedule 2.1(b) of the Company Disclosure Schedule sets forth a true, correct and complete list of: (i) the names of the members of the Board of Directors (or similar body), (ii) the names of the members of each committee of the Board of Directors (or similar body) and (iii) the names and titles of the officers of the Company.

2.2 Capital Structure.

(a) The authorized capital stock of the Company consists solely of 403,000,000 shares of Company Common Stock. A total of 365,449,822 shares of Company Common Stock are issued and outstanding as of the Agreement Date and, as of the Agreement Date, there are no other issued and outstanding shares of Company Common Stock and no outstanding commitments or Contracts to issue any shares of Company Common Stock other than pursuant to the exercise of outstanding Company Options under the Company Option Plans. The Company holds no treasury shares. Schedule 2.2(a) of the Company Disclosure Schedule sets forth, as of the Agreement Date, a true, correct and complete list of the Company Shareholders and the number and type of such shares so owned by such Company Shareholder. There are no shares of Company Common Stock that are not vested under the terms of any Contract with the Company (including any stock option agreement, stock option exercise agreement or restricted stock purchase agreement) as of the Agreement Date, including as a result of any early exercise of any Company Options. All issued and outstanding shares of Company Common Stock are duly authorized, validly issued, fully paid and non-assessable and are free of any Liens (other than Permitted Liens), outstanding subscriptions, preemptive rights or "put" or "call" rights created by statute, the Certificate of Incorporation, the Bylaws or any Contract to which the Company is a party or by which the Company or any of its assets is bound. The Company is not under any obligation to register under the Securities Act or any other Applicable Law any shares of Company Common Stock, any Equity Interests or any other securities of the Company, whether currently outstanding or that may subsequently be issued. All issued and outstanding shares of Company Common Stock and all Company Options were issued in compliance with Applicable Law and all requirements set forth in the Certificate of Incorporation, the Bylaws and any applicable Contracts to which the Company is a party or by which the Company or any of its assets is bound.

(b) As of the Agreement Date, the Company has reserved 40,000,000 shares of Company Common Stock for issuance to employees, non-employee directors and consultants pursuant to the Company Option Plans, of which 15,213,363 shares are subject to outstanding and unexercised Company Options, and 24,786,637 shares remain available for issuance thereunder. Schedule 2.2(b) of the Company Disclosure Schedule sets forth, as of the Agreement Date, a true, correct and complete list of all Company Optionholders, whether or not granted under the Company Option Plans, including the number of shares of Company Common Stock subject to each Company Option, the number of such shares that are vested or unvested, the date of grant, the vesting commencement date, the vesting schedule, the exercise price per share, the Tax status of such option under Section 422 of the Code, the term of each Company Option, the plan from which such Company Option was granted and, for each such holder who is not a resident of the United States, the residence of such holder. In addition, Schedule 2.2(b) of the Company Disclosure Schedule indicates which Company Optionholders are Persons that are not employees of the Company (including non-employee directors, consultants, advisory board members, vendors, service providers or other similar Persons), including a description of the

relationship between each such Person and the Company. True, correct and complete copies of each Company Option Plan, all agreements and instruments relating to or issued under each Company Option Plan (including executed copies of all Contracts relating to each Company Option and the shares of Company Common Stock purchased under such Company Option) have been provided to Parent, and such Company Option Plans and Contracts have not been amended, modified or supplemented since being provided to Parent, and there are no agreements, understandings or commitments to amend, modify or supplement such Company Option Plans or Contracts in any case from those provided to Parent. The terms of the Company Option Plans permit the treatment of Company Options as provided herein.

(c) As of the Agreement Date, there are no authorized, issued or outstanding Equity Interests of the Company other than shares of Company Common Stock and Company Options. Other than as set forth on Schedules 2.2(a) and 2.2(b) of the Company Disclosure Schedule, as of the Agreement Date, no Person has any Equity Interests of the Company, stock appreciation rights, stock units, share schemes, calls or rights, or is party to any Contract of any character to which the Company or a Company Securityholder is a party or by which it or its assets is bound, (i) obligating the Company or such Company Securityholder to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any Equity Interests of the Company or other rights to purchase or otherwise acquire any Equity Interests of the Company, whether vested or unvested, or (ii) obligating the Company to grant, extend, accelerate the vesting and/or repurchase rights of, change the price of, or otherwise amend or enter into any such Company Option, call, right or Contract.

(d) There are no Contracts relating to voting, purchase, sale or transfer of any Company Common Stock between or among the Company and any Company Securityholder, other than written Contracts granting the Company the right to purchase unvested shares upon termination of employment or service. Neither the Company Option Plans nor any Contract of any character to which the Company is a party to or by which the Company or any of its assets is bound relating to any Company Options requires or otherwise provides for any accelerated vesting of any Company Options or the acceleration of any other benefits thereunder, in each case in connection with the Transactions or upon termination of employment or service with the Company or Parent, or any other event, whether before, upon or following the Effective Time or otherwise.

(e) The Spreadsheet will accurately set forth, as of the Closing, the information required by Section 4.7.

2.3 Authority; Non-contravention.

(a) Subject to obtaining the Company Shareholder Approval, the Company 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 the Company. This Agreement has been duly executed and delivered by the Company and, assuming the due execution and delivery of this Agreement by the other parties hereto, constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms subject only to the effect, if any, of (i) applicable bankruptcy and other similar Applicable Law affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. The Board of Directors, by resolutions duly adopted (and not thereafter modified or rescinded) by the unanimous vote of the Board of Directors, has (i) determined that this Agreement, the Merger and the other Transactions are advisable and in the best interests of the Company and the Company Shareholders, (ii) approved this Agreement, the Merger and the other Transactions and adopted this Agreement in accordance with the provisions of the NYBCL and (iii) directed that the adoption of this Agreement be submitted to the Company Shareholders for consideration and determined to recommend that all of the Company

Shareholders adopt this Agreement. The affirmative votes of the holders of two-thirds of the outstanding shares of Company Common Stock are the only votes of the holders of any Equity Interests of the Company necessary to adopt this Agreement under the NYBCL, the Certificate of Incorporation and the Bylaws, each as in effect at the time of such adoption (collectively, the "Company Shareholder Approval").

(b) The execution and delivery of this Agreement by the Company does not, and the consummation of the Transactions will not, (i) result in the creation of any Lien on any of the material assets of the Company or any of the shares of Company Common Stock 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 the Bylaws, in each case as amended to date, (B) any Material Contract or (C) any Applicable Law.

(c) No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity or any other Person is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the Transactions, except for (i) the filing of the Certificate of Merger, as provided in Section 1.1(d), and (ii) such other consents, approvals, Orders, authorizations, registrations, declarations, filings and notices that, if not obtained or made, would not adversely affect in any material respect, and would not reasonably be expected to adversely affect in any material respect, the Company's ability to perform or comply with the covenants, agreements or obligations of the Company herein or to consummate the Transactions in accordance with this Agreement and Applicable Law.

(d) The Company, the Board of Directors and the Company Shareholders have taken all actions such that the restrictive provisions of any "fair price," "moratorium," "control share acquisition," "business combination," "interested shareholder" or other similar anti-takeover statute or regulation, and any anti-takeover provision in the organizational or governing documents of the Company will not be applicable to any of Parent, the Company or the Surviving Corporation, or to the execution, delivery, or performance of this Agreement, or to the Transactions, the Company Shareholder Approval or the Requisite Shareholder Approval.

2.4 Financial Statements; Absence of Changes.

(a) The Company has delivered to Parent its audited financial statements for the fiscal years ended December 31, 2011 and December 31, 2012 (including, in each case, balance sheets, income statements and statements of cash flows), and its unaudited financial statements for the three-month period ended March 31, 2013 (including a balance sheet and income statement) (the "Interim Financial Statements") (collectively, the "Financial Statements"), which are included as Schedule 2.4(a) of the Company Disclosure Schedule. The Financial Statements (i) are derived from and consistent with the books and records of the Company, (ii) fairly and accurately present the financial condition of the Company at the dates therein indicated and, as applicable, the results of operations and cash flows of the Company for the periods therein specified and (iii) with respect to the financial statements for (A) the fiscal years ended December 31, 2011 and December 31, 2012, were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and (B) the three-month period ended March 31, 2013, were prepared in a manner consistent with the corresponding financial statement for the fiscal year ended December 31, 2012, except in the cases of clauses (ii) and (iii), as noted therein and subject, in the case of unaudited interim period financial statements, to normal and recurring year-end audit adjustments (none of which individually or in the aggregate will be material in amount), the absence of footnotes and any other adjustments described therein.

(b) The Company has no Liabilities of any nature other than (i) those set forth or adequately provided for in the balance sheet included in the Financial Statements as of December 31, 2012 (the "Company Balance Sheet"), (ii) those incurred in the conduct of the Company's business since December 31, 2012 (the "Company Balance Sheet Date") in the ordinary course of business consistent with past practice that are of the type that ordinarily recur and, individually or in the aggregate, are not material in nature or amount, (iii) those that are disclosed in the Company Disclosure Schedule or (iv) those incurred by the Company in connection with the execution of this Agreement. 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 parties 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. All reserves that are set forth in or reflected in the Company Balance Sheet have been established in accordance with GAAP consistently applied and are adequate.

(c) Schedule 2.4(c) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Company Debt, including, for each item of Company Debt, the agreement governing the Company Debt and the interest rate, maturity date, any assets securing such Company Debt and any prepayment or termination penalties that would be payable in connection with a prepayment or termination of such Company Debt as of the Closing.

(d) Schedule 2.4(d) of the Company Disclosure Schedule sets forth the names and locations of all banks and other financial institutions at which the Company maintains accounts and the names of all Persons authorized to make withdrawals therefrom.

(e) The accounts receivable of the Company (the "Accounts Receivable") as reflected in the Company Closing Financial Certificate arose in the ordinary course of business consistent with past practice and represent *bona fide* claims against debtors for sales and other charges, and have been collected or, to the knowledge of the Company, are collectible in accordance with their terms in the book amounts thereof, subject to the allowance for doubtful accounts provided for in the Company Balance Sheet or in the Company Closing Financial Certificate, as the case may be. Allowances for doubtful accounts and warranty returns have been prepared, in all material respects, in accordance with GAAP consistently applied and in accordance with the Company's past practice and, to the knowledge of the Company, are sufficient to provide for any losses that may be sustained on realization of the applicable Accounts Receivable. Schedule 2.4(e) of the Company Disclosure Schedule sets forth such amounts of Accounts Receivable in the aggregate that are subject to asserted warranty claims by customers.

(f) The Company has established and maintains a system of internal accounting controls sufficient to provide reasonable assurances (i) that all material transactions, receipts and expenditures of the Company are being executed and made only in accordance with appropriate authorizations of management and the Board of Directors, (ii) that transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP and (B) to maintain accountability for assets, (iii) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of Company and (iv) that the amount recorded for assets on the books and records of the Company is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. To the knowledge of the Company, none of the Company, the Company's independent auditors and any current employee or director of the Company has identified or been made aware of any fraud, whether or not material, that involves Company's management or other current or former employees, consultants or directors of the Company who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company. The Company has not received any material complaint, allegation, assertion or claim, whether written or, to knowledge of the Company, oral, in each case, that the accounting or auditing practices, procedures, methodologies or

methods of the Company or its internal accounting controls do not comply with GAAP or Applicable Law in any material respect. There are no significant deficiencies or material weaknesses in the design or operation of the Company's internal controls that would reasonably be expected to adversely affect the Company's ability to record, process, summarize and report financial data.

(g) Since the Company Balance Sheet Date, (x) the Business has been conducted in the ordinary course of business consistent with past practice in all material respects, (y) there has not occurred a Material Adverse Effect and (z) none of the following has occurred:

(i) any payment, discharge, satisfaction or settlement of any material Proceeding against the Company, or commencement of any Proceeding by or against any third party, in each case except in the ordinary course of business consistent with past practice;

(ii) any split, combination, reclassification or recapitalization of any of the Company's capital stock or any issuance or authorization of any issuance of any securities respect of, in lieu off or in substitution for shares of capital stock or other securities of the Company;

(iii) any declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock or other voting securities of, or ownership or voting interests in, the Company or any direct or indirect redemption, purchase or other acquisition of any such shares, securities or interests;

(iv) any issuance, authorization for issuance, or sale of any shares of capital stock or other voting securities of, or ownership interests in, or securities convertible into or exercisable for shares of capital stock or other voting securities of, or ownership interests in, the Company (other than the exercise of Company Options in accordance with their terms);

(v) any sale, assignment, pledge, encumbrance, transfer or other disposition of any material asset of the Company (excluding in all events sales of assets no longer useful in the operation of the business and sales of inventory to customers), or any sale, assignment, transfer, license or other disposition of any material Intellectual Property or any other material intangible assets of the Company;

(vi) any creation of any Lien on any material property of the Company, except for Permitted Liens;

(vii) any write-down of the value of any asset of the Company or any write-off as uncollectible of any accounts or notes receivable of the Company or any portion thereof, other than write-downs or write-offs that are reserved for on the Company Balance Sheet or which do not exceed $75,000 in the aggregate;

(viii) any cancellation of any material debts or claims or any amendment, termination or waiver of any rights of material value to the Company;

(ix) any capital expenditures or commitments or additions to property, plant or equipment of the Company in excess of $75,000 individually or $75,000 in the aggregate;

(x) (A) any deferral of payments of any accounts payable or other Liabilities of the Company beyond the earlier of the stated due date thereof and the date on which such payment would be made in the ordinary course of business consistent with past practice, or (B) any acceleration or inducement of the collection of any Accounts Receivable (including by giving

any discount, accommodation or other concession) other than in the ordinary course of business consistent with past practice;

(xi) any change in the independent public accountants of the Company or any material change in the accounting methods, keeping of books of account, cash management or accounting practices followed by the Company, including with respect to Taxes, or any material change in depreciation or amortization policies or rates, or any change in election with respect to Taxes;

(xii) any grant or payment of, or entry in any Contract providing for the granting of, any severance, retention or termination pay, or the acceleration of vesting or other benefits, to any employee or director of the Company; or

(xiii) any agreement, whether in writing or otherwise, to take any of the actions specified in the foregoing items (i) through (xii), subject to any dollar thresholds set forth in items (i) through (xii) above.

2.5 Litigation. There is no Proceeding pending before any Governmental Entity, or, to the knowledge of the Company, threatened against the Company or any of its assets or any of its directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company). There is no Order against the Company, any of its assets or, to the knowledge of the Company, any of its directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company). The Company has no Proceeding pending against any other Person.

2.6 Restrictions on Business Activities. There is no Contract or Order binding upon the Company that (i) restricts or prohibits, (ii) purports to restrict or prohibit in any material respect, (iii) has the effect of prohibiting, restricting or impairing or (iv) would reasonably be expected to have the effect of prohibiting, restricting or impairing in any material respect, in each case, whether before or after consummation of the Merger, any current or, in any material respect, presently proposed business practice of the Company or the conduct of the Business as currently conducted or, in any material respect, proposed to be conducted, excluding restrictions on the use of Third-Party Intellectual Property Rights contained in the applicable written license agreement therefor, limiting the freedom of the Company to (i) 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 (ii) sell, distribute or manufacture any current Company Products or to purchase or otherwise obtain any software, components, parts or services.

2.7 Compliance with Laws; Company Authorizations.

(a) The Company has complied in all material respects with, and has not received any written notices of violation with respect to, Applicable Law.

(b) The Company has obtained each material federal, state, county, local or foreign governmental consent, license, permit, grant or other authorization of a Governmental Entity (i) pursuant to which the Company currently operates or holds any interest in any of its assets or properties or (ii) that is required for the conduct of the Business or the holding of any such interest (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 except for failures to be in full force and effect that would not be material to the Company. The Company has not received any written notice or other communication from any Governmental Entity regarding (i) any actual or possible violation 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 and none of the Company Authorizations will be terminated, in whole or in part, or will become terminable, in whole or in part, as a result of the consummation of the Transactions. The Company's representations and warranties under this Section 2.7(b) are not made with respect to matters relating to Intellectual Property or privacy or data security , such matters being the subject of Section 2.9, matters relating to Taxes, such matters being the subject of Section 2.10, matters relating to labor or employee benefits, such matters being the subject of Section 2.11, matters relating to Environmental, Health and Safety Requirements, such matters being the subject of Section 2.18, or matters relating to compliance with Applicable Law relating to foreign corrupt practices or export controls, such matters being the subjects of Sections 2.17 and 2.19, respectively.

2.8 Title to and Condition of Assets. The Company has good title to, or a valid leasehold interest in, as applicable, all of the personal properties and assets reflected on the Company Balance Sheet or acquired after the Company Balance Sheet Date (except properties and assets, or interests in properties and assets, sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business), free and clear of all Liens, except for Permitted Liens and defects in title or failures to be valid or in full force and effect that are not material to the Company. Schedule 2.8 of the Company Disclosure Schedule identifies each parcel of real property leased by the Company. The Company has provided to Parent true, correct and complete copies of all leases, subleases and other agreements under which the Company uses or occupies or has the right to use or occupy, now or in the future, any real property or facility, including all modifications, amendments and supplements thereto. The Company does not currently own any real property.

2.9 Intellectual Property.

(a) The Company (i) owns and has independently developed or acquired or (ii) has the rights to use all Company IP Rights that are used or held for use in the conduct of the Business.

(b) The Company has not (i) transferred ownership of any Intellectual Property that is or was Company-Owned IP Rights, to any third party, or (ii) knowingly permitted the Company's rights in any Intellectual Property that are or were Company-Owned IP Rights to enter the public domain or, with respect to any Intellectual Property for which the Company has submitted an application or obtained a registration, lapse (other than through the expiration of registered Intellectual Property at the end of its maximum statutory term or the cancellation of claims in the ordinary course of prosecution before the United States Patent and Trademark Office and analogous and/or supranational offices in jurisdictions outside of the United States), in each case (ii), in a manner that would reasonably be expected to interfere with the conduct of the Business as currently conducted.

(c) Except as set forth in Schedule 2.9(c) of the Company Disclosure Schedule, the Company owns and has good and exclusive title to each item of Company-Owned IP Rights, free and clear of any Liens (other than Permitted Liens). The right, license and interest of the Company in and to all Third-Party Intellectual Property Rights licensed by the Company from a third party are free and clear of all Liens (excluding restrictions and limitations contained in the applicable written license agreements with such third parties and Permitted Liens).

(d) Neither the execution or delivery of this Agreement nor the performance of the Company's obligations under this Agreement will conflict with or impair the Company's rights in or any Company-Owned IP Rights or otherwise trigger any additional payments with respect thereto.

(e) Schedule 2.9(e) of the Company Disclosure Schedule lists all current Company Products by name and version number.

(f) Schedule 2.9(f) of the Company Disclosure Schedule lists all Company Registered Intellectual Property, and the jurisdictions in which such Company Registered Intellectual Property has been issued or registered or in which any application for such issuance and registration has been filed, and all filings and fees that are required to be taken by the Company within 90 days of the Agreement Date in order to avoid prejudice to, impairment or abandonment of such Intellectual Property. To the knowledge of the Company, each item of Company Registered Intellectual Property is valid (excluding any pending applications included in the Company Registered Intellectual Property) and subsisting, all necessary registration, maintenance and renewal fees currently due in connection with such Company Registered Intellectual Property have been paid and all documents, recordations and certificates in connection with such Company Registered 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 Intellectual Property and recording the Company's ownership interests therein, except where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in the impairment or abandonment of such Company Registered Intellectual Property or the Company's ownership interests therein.

(g) No Contract governing any Company IP Rights to which the Company is a party ("Company IP Rights Agreement") includes a grant by the Company to any third party of (i) any exclusive rights to or under any Company- Owned IP Rights or (ii) other than as set forth in (x) Contracts listed in Section 2.15 and (y) licenses granted to end-users or customers in the ordinary course of business on the Company's standard form(s) of agreement (including the Company's website terms of service and end user license agreement for downloadable software), copies of which have been provided to Parent, any right to sublicense any Company IP Rights.

(h) There are no royalties, honoraria, fees or other payments payable by the Company to any Person (other than salaries and commissions payable to employees in the course of their employment with the Company, fees and commissions payable to consultants and independent contractors for work performed for the Company, and customary fees charged by third parties pursuant to Ordinary Course Agreements listed in Section 2.15) as a result of the ownership, use, license-in, license-out, sale, or disposition of any Company-Owned IP Rights by the Company.

(i) To the knowledge of the Company, there is no unauthorized use, unauthorized disclosure, infringement or misappropriation of any material Company-Owned IP Rights, by any third party, including any employee or former employee of the Company. Except as set forth on Schedule 2.9(i) of the Company Disclosure Schedule, the Company has not brought any action, suit or proceeding for infringement or misappropriation of any Intellectual Property or breach of any Company IP Rights Agreement.

(j) Except as set forth on Schedule 2.9(j) of the Company Disclosure Schedule, there have been no Proceedings, and as of the Agreement Date, there are no Proceedings pending or to the knowledge of the Company, threatened in writing that involve a claim of infringement or misappropriation of any Third-Party Intellectual Property Rights or that contests the validity, ownership or right of the Company to exercise any Company-Owned IP Rights. The Company has not received any written communication that involves an offer to license or grant any other rights or immunities under any Third-Party Intellectual Property Rights that could reasonably be interpreted as alleging infringement or misappropriation of such Third-Party Intellectual Property Rights.

(k) The Company has no Liability for infringement or misappropriation of Third-Party Intellectual Property Rights. The conduct of the Business as it is currently conducted does not infringe or misappropriate any valid, subsisting and enforceable Third-Party Intellectual Property Rights.

To the Company's knowledge, there is no substantial basis for a claim that the conduct of the Business will infringe or misappropriate, has infringed or misappropriated, or is currently infringing or misappropriating, any valid, subsisting and enforceable Third-Party Intellectual Property Rights. The Company has not received any written opinion from its legal counsel that any Company Product or the conduct of the Business infringes or misappropriates any Third-Party Intellectual Property Rights.

(l) Except as set forth on Schedule 2.9(l) of the Company Disclosure Schedule, none of the Company-Owned IP Rights, the Company Products or the Company is subject to any Order to which the Company is a party (i) restricting the use, transfer or licensing by the Company of any Company-Owned IP Right or any Company Product, (ii) adversely affecting the validity, use or enforceability of any such Company-Owned IP Right or Company Product, or (iii) restricting the conduct of the Business in order to accommodate Third-Party Intellectual Property Rights.

(m) No (i) government funding, or (ii) facilities of a university, college, or other educational institution was used in the development of the Company-Owned IP Rights.

(n) The Company has taken commercially reasonable steps to protect and preserve the confidentiality of all confidential or non-public information of the Company (including trade secrets). Without limiting the foregoing, the Company has a policy requiring employees to sign a confidentiality and non-disclosure agreement (the "Employee NDA"), which agreement includes provisions regarding the confidentiality of all confidential or non-public information of the Company (including trade secrets) or provided by any third party to the Company and included in the Company IP Rights. A copy of the current form of Employee NDA has been made available to Parent prior to the date hereof.

(o) To the knowledge of the Company, no current or former employee, consultant, advisor or independent contractor of the Company is in material violation of any term or covenant of any Contract relating to employment, invention disclosure, invention assignment, or non-disclosure.

(p) The employment of any employee of the Company or the use by the Company of the services of any consultant does not subject the Company to any Liability to any third party for improperly soliciting such employee or consultant to work for the Company based on contractual obligations of the Company to such third party.

(q) The Company has obtained from the consultants and independent contractors who have been engaged by the Company to develop Intellectual Property for the Company and its employees (each, an "Author") unencumbered and unrestricted exclusive ownership to Intellectual Property developed, in the case of employees, within the scope of such employee's employment or, in the case of a Person other than an employee, from the services such Author performs for the Company, to the extent of such Authors' respective contributions to the Company of Intellectual Property used or held for use in the conduct of the Business. No current or former founder, employee, consultant or independent contractor of the Company has any right, license or claim to any Company-Owned IP Rights (other than any limited licenses to perform services for or on behalf of the Company).

(r) The Company has not delivered or licensed or provided to any Person or agreed or obligated itself to deliver or license or provide to any Person any Company Source Code, other than disclosures to employees, independent contractors, and consultants involved in the development, maintenance, and provision of other services with respect to Company Products or Company IP Rights. No event has occurred that entitles, and no circumstance or condition exists that is reasonably likely to entitle, with or without notice or lapse of time, or both, any Person (other than the Company or its employees, independent contractors and consultants involved in the development, maintenance, and provision of other services with respect to Company Products or Company IP Rights) to receive any

Company Source Code.

(s) None of the Contracts to which the Company is a party or by which any of its material Company IP Rights are bound will, solely as a direct result of the Company's execution, delivery and performance of this Agreement, or the consummation of the Merger: (i) grant to any third party any right to Intellectual Property owned by Parent (other than pre-existing rights and licenses to Company IP Rights); or (ii) pay any royalties to a third party with respect to Intellectual Property owned by Parent (other than pre-existing royalties payable in connection with Company IP Rights).

(t) Set forth on Schedule 2.9(t) of the Company Disclosure Schedule is a list of software and other materials that are licensed to the Company pursuant to the terms of an Open Source License ("Open Source Materials") and used in any Company Products and IT Systems developed by or on behalf of the Company and, as applicable, describes the manner in which such Open Source Materials have been used by the Company. The Company is not in breach of any of the terms of any Open Source Licenses applicable to its use of Open Source Materials. Except as set forth on Schedule 2.9(t) of the Company Disclosure Schedule, no Company-Owned IP Right is subject to a requirement that it be distributed under an Open Source License. As used herein "Open Source License" means any software license agreement that requires that the software licensed thereunder and any software combined or distributed with or derived from such licensed software to (i) be licensed under terms that authorize reverse engineering except as may be required under Applicable Law, (ii) be made available or distributed in source code form, (iii) be licensed for the purpose of making derivative works or (iv) be redistributed at no charge.

(u) The Company has complied in all material respects with Applicable Law and with the Company's published privacy policies and internal guidelines and procedures, each as in effect from time to time, relating to privacy and data security, including with respect to the collection, use, disclosure and transfer (including cross-border transfers) of Personal Data collected, used or held by the Company. The Company has made all disclosures to, and obtained all necessary consents from, all users, customers and workers (i.e., employees, independent contractors and temporary employees) required by Applicable Law relating to privacy and data security. The Company has not received any written complaint regarding the Company's collection, use or disclosure of Personal Data.

(v) To the Company's knowledge, the software used in the conduct of the Business (i) is substantially free of any material defects, bugs and errors in accordance with generally-accepted industry standards and (ii) does not contain any disabling codes or instructions, spyware, Trojan horses, worms, viruses or other software routines that permit or cause unauthorized access to, or disruption, impairment, disablement, or destruction of other software, data or the IT Systems that could not be timely remedied using generally-accepted industry standard measures (collectively, "Contaminants"). The Company has taken commercially reasonable steps and implemented commercially reasonable safeguards intended to protect the material information technology systems (including hardware and software) used to provide Company Products to customers in connection with the conduct of the Business (collectively, the "IT Systems") from Contaminants. The Company has in place commercially reasonable disaster recovery plans, procedures and facilities for the IT Systems and has taken commercially reasonable steps to safeguard the security of the IT Systems. To the knowledge of the Company, as of the Agreement Date, there has been no unauthorized intrusions or breaches of the security of the IT Systems that required the Company to notify customers or employees of such breach or intrusion pursuant to Applicable Law.

(w) All Company Products sold, licensed, leased or delivered by the Company to customers and all services provided by the Company to customers as of the date of this Agreement conform to applicable contractual commitments, express and implied warranties (to the extent not subject to legally effective express exclusions thereof), and conform in all material respects to advertising and

marketing materials, except where the failure to be in conformity, individually or in the aggregate, is not and would not reasonably be expected to be material to the Company.

2.10 Taxes.

(a) The Company has properly completed and timely filed all Tax Returns required to be filed by it prior to the Closing Date, has timely paid all Taxes required to be paid by it (whether or not shown on any Tax Return), and has no Liability for Taxes in excess of the amounts so paid. There is no claim for Taxes that has resulted in a Lien against any of the assets of the Company.

(b) The Company has delivered to Parent true, correct and complete copies of all income and other material Tax Returns, examination reports and statements of deficiencies, adjustments, and proposed deficiencies and adjustments in respect of the Company for all open Tax periods.

(c) The Company Balance Sheet reflects all Liabilities for unpaid Taxes of the Company for periods (or portions of periods) through the Company Balance Sheet Date. The Company does not have any Liability for unpaid Taxes accruing after the Company Balance Sheet Date except for Taxes arising in the ordinary course of business consistent with past practice subsequent to the Company Balance Sheet Date. The Company does not have any Liability for Taxes (whether outstanding, accrued for, contingent or otherwise) that is not included in the calculation of Company Net Working Capital.

(d) There is (i) no audit or pending audit of, or Tax controversy associated with, any Tax Return of the Company being conducted by a Tax Authority, (ii) no other procedure, proceeding or contest of any refund or deficiency in respect of Taxes pending or on appeal with any Governmental Entity, (iii) no extension of any statute of limitations on the assessment of any Taxes granted by the Company currently in effect and (iv) no agreement to any extension of time for filing any Tax Return that has not been filed. No 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.

(e) The Company has neither been nor will be required to include any adjustment in Taxable income for any Tax period (or portion thereof) pursuant to Section 481 or 263A of the Code or any comparable provision under state, local or foreign Tax laws as a result of transactions, events or accounting methods employed prior to the Merger.

(f) The Company is not a party to, or bound by, any Tax sharing, Tax indemnity or Tax allocation agreement, and the Company has no any Liability or potential Liability to another party under any such agreement.

(g) The Company has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return that could result in the imposition of penalties under Section 6662 of the Code or any comparable provisions of state, local or foreign Applicable Law.

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

(i) Neither the Company nor any predecessor of the Company has ever been a member of a consolidated, combined, unitary or aggregate group of which the Company or any

predecessor of the Company was not the ultimate parent corporation.

(j) The Company is not a party to any joint venture, partnership or other agreement, contract or arrangement which could be treated as a partnership or disregarded entity for federal tax purposes.

(k) The Company 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.

(l) The Company will not be required to include any item of income in, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a Taxable period ending on or prior to the Closing Date, (ii) "closing agreement" described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law) executed on or prior to the Closing Date, (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law) with respect to a transaction occurring on or prior to the Closing Date, (iv) installment sale or open transaction disposition made on or prior to the Closing Date or (v) prepaid amount received on or prior to the Closing Date.

(m) The Company has not received any private letter ruling from the Internal Revenue Service (or any comparable Tax ruling from any other Governmental Entity).

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

(o) The Company has not constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock qualifying for Tax-free treatment under Section 355 of the Code in the two years prior to the Agreement Date.

(p) The Company has (i) complied with all Applicable Law relating to the payment, reporting and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1445 and 1446 of the Code or similar provisions under any foreign law), (ii) withheld (within the time and in the manner prescribed by Applicable Law) from employee wages or consulting compensation and paid over to the proper governmental authorities (or is properly holding for such timely payment) all amounts required to be so withheld and paid over under all Applicable Law, including federal and state income Taxes, Federal Insurance Contribution Act, Medicare, Federal Unemployment Tax Act, relevant state income and employment Tax withholding laws and (iii) timely filed all withholding Tax Returns, for all periods through and including the Closing Date.

(q) Each "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) sponsored or maintained by the Company has since (i) January 1, 2005, been maintained and operating in good faith compliance with Section 409A, and (ii) January 1, 2009, been in documentary and operational compliance with Section 409A in all material respects. Each Company Option which vested on or after January 1, 2005, was originally granted with an exercise price that was no less than the fair market value of a share of Company Common Stock on the date of grant, determined in accordance with Section 409A of the Code.

(r) Except as set forth on Schedule 2.10(r) of the Company Disclosure Schedule, there is no agreement, plan, arrangement or other Contract covering any current or former employee or other service provider of the Company or any ERISA Affiliate to which the Company is a party or by which the Company or its assets is bound that, considered individually or considered collectively with any other such agreements, plans, arrangements or other Contracts, will, or would reasonably be expected to, as a result of the Transactions (whether alone or upon the occurrence of any additional or subsequent events), give rise directly or indirectly to the payment of any amount that would reasonably be expected to give rise directly or indirectly to the payment of any amount that could reasonably be expected to (i) be non-deductible under Section 162 of the Code (or any corresponding or similar provision of state, local or foreign Tax law) or (ii) be characterized as a "parachute payment" within the meaning of Section 280G of the Code (or any corresponding or similar provision of state, local or foreign Tax law).

2.11 Employee Benefit Plans and Employee Matters.

(a) Schedule 2.11(a) of the Company Disclosure Schedule lists, with respect to the Company and any trade or business (whether or not incorporated) that is treated as a single employer with the Company (an "ERISA Affiliate") within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (ii) each loan to an employee, (iii) other than the Company Option Plan, all stock option, stock purchase, phantom stock, stock appreciation right, restricted stock unit, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Section 125 of the Code), dependent care (Section 129 of the Code), life insurance or accident insurance plans, programs or arrangements, (iv) all bonus, pension, profit sharing, savings, severance, retirement, deferred compensation or incentive plans (including cash incentive plans), programs or arrangements, (v) all other material written fringe or employee benefit plans, programs or arrangements and (vi) all employment or executive compensation or severance agreements as to which any unsatisfied obligations of the Company remain for the benefit of, or relating to, any present or former employee, consultant or non-employee director of the Company (all of the foregoing described in clauses (i) through (vi), collectively, the "Employee Plans").

(b) The Company does not sponsor or maintain any self-funded Employee Plan, including any plan to which a stop-loss policy applies. The Company has provided to Parent a true, correct and complete copy of each of the Employee Plans and related plan documents (including trust documents, insurance policies or Contracts, employee booklets, summary plan descriptions and other authorizing documents, and any material employee communications relating thereto) and has, with respect to each Employee Plan that is subject to ERISA reporting requirements, provided to Parent true, correct and complete copies of the Form 5500 reports filed for the last three plan years. Any Employee Plan intended to be qualified under Section 401(a) of the Code has been established under a master, prototype, or volume submitter plan for which an Internal Revenue Service opinion or advisory letter has been obtained by the plan sponsor and is valid as to the adopting employer. The Company has provided to Parent a true, correct and complete copy of the most recent Internal Revenue Service determination, opinion or advisory letter issued with respect to each such Employee Plan, and nothing has occurred since the issuance of each such letter that would reasonably be expected to cause the loss of the Tax-qualified status of any Employee Plan subject to Section 401(a) of the Code. All individuals who, pursuant to the terms of any Employee Plan, are entitled to participate in any Employee Plan, are currently participating in such Employee Plan or have been offered an opportunity to do so.

(c) None of the Employee Plans promises or provides retiree medical or other retiree welfare benefits to any person other than as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law ("COBRA") and the Company has complied in all material respects with the requirements of COBRA. The Company has not engaged in a "prohibited

transaction" (within the meaning of Section 406 of ERISA and Section 4975 of the Code and not exempt under Section 408 of ERISA or applicable regulatory guidance thereunder) (a "non-exempt prohibited transaction") with respect to any Employee Plan and, to the Company's knowledge, no non-exempt prohibited transaction has occurred with respect to any Employee Plan. Each Employee Plan has been administered in all material respects in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code). All contributions required to be made by the Company or any ERISA Affiliate to any Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Employee Plan for the current plan years (and no further contributions will be due or will have accrued thereunder as of the Closing Date, other than contributions accrued in the ordinary course of business consistent with past practices after the Company Balance Sheet Date as a result of the operations of the Company after the Company Balance Sheet Date). In addition, with respect to each Employee Plan intended to include a Code Section 401(k) arrangement, the Company and each of the ERISA Affiliates have at all times been in material compliance with the rules regarding timely deposits of employee salary reduction contributions and participant loan repayments, as determined pursuant to regulations issued by the United States Department of Labor. Each Employee Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without Liability to Parent (other than ordinary administrative expenses typically incurred in a termination event). No suit, administrative proceeding, action, litigation or claim has been brought, or to the knowledge of the Company, is threatened, against or with respect to any such Employee Plan, including any audit or inquiry by the Internal Revenue Service or United States Department of Labor other than ordinary claims for benefits.

(d) There has been no amendment to, written interpretation or announcement (whether or not written) by the Company or any ERISA Affiliate relating to, or change in participation or coverage under, any Employee Plan that would materially increase the expense of maintaining such Employee Plan above the level of expense incurred with respect to such Employee Plan for the most recent full fiscal year included in the Financial Statements.

(e) Neither the Company nor any current or former ERISA Affiliate currently maintains, sponsors, participates in or contributes to, or has ever maintained, established, sponsored, participated in, or contributed to, any pension plan (within the meaning of Section 3(2) of ERISA) that is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code.

(f) Neither the Company nor any ERISA Affiliate is a party to, or has made any contribution to or otherwise incurred any obligation under, any "multiemployer plan" as such term is defined in Section 3(37) of ERISA or any "multiple employer plan" as such term is defined in Section 413(c) of the Code.

(g) No Employee Plan is sponsored, maintained or contributed to under the law or applicable custom or rule of the any jurisdiction outside of the United States.

(h) The Company is in compliance in all material respects with all Applicable Law respecting employment, discrimination in employment, terms and conditions of employment, employee benefits, worker classification (including the proper classification of workers as independent contractors and consultants), wages, hours and occupational safety and health and employment practices, including the Immigration Reform and Control Act. The Company is not liable for any arrears of wages, compensation, Taxes, penalties or other sums for failure to comply with any of the foregoing. The Company has paid in full to all employees, independent contractors and consultants all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees, independent contractors and consultants. The Company is not liable for any payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, social security

or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistently with past practice). There are no pending claims against the Company under any workers compensation plan or policy or for long term disability. The Company has no obligations under COBRA with respect to any former employees or qualifying beneficiaries thereunder, except for obligations that are not material in amount. There are no controversies pending or, to the knowledge of the Company, threatened, between the Company and any of its employees, which controversies have or would reasonably be expected to result in a Proceeding before any Governmental Entity.

(i) The Company has provided to Parent true, correct and complete copies of each of the following: (i) all forms of offer letters, (ii) all forms of employment agreements and severance agreements, (iii) all forms of services agreements and agreements with current and former consultants and/or advisory board members, (iv) all forms of confidentiality, non-competition or inventions agreements between current and former employees/consultants and the Company (and a true, correct and complete list of employees, consultants and/or others not subject thereto), (v) the most current management organization chart(s) and (vi) a schedule of bonus commitments made to employees of the Company.

(j) The Company is not a party to, bound by, or had any obligations under any collective bargaining agreement or other labor union Contract, and no collective bargaining agreement is being negotiated by the Company. No union or other collective bargaining unit or employee organizing entity has been certified or recognized by the Company as representing any of its employees. To the knowledge of the Company, there is no pending demand for recognition or any other request or demand from a labor organization for representative status with respect to any Person employed by the Company. To the knowledge of the Company, there are no activities or proceedings of any labor union or to organize the employees of the Company. There is no labor dispute, strike or work stoppage against the Company pending or, to the knowledge of the Company, threatened that may interfere with the conduct of the Business. None of the Company and, to the knowledge of the Company, any of their respective Representatives has committed any unfair labor practice in connection with the conduct of the Business, and there is no charge or complaint against the Company by the National Labor Relations Board or any comparable Governmental Entity pending or, to the knowledge of the Company, threatened. No employee of the Company has been dismissed for cause in the immediately preceding 12 months.

(k) To the knowledge of the Company, no employee of the Company is in violation of any term of any employment agreement, non-competition agreement or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company because of the nature of the Business or to the use of trade secrets or proprietary information of others. To the knowledge of the Company, no contractor of the Company is in violation of any term of any non-competition agreement or any restrictive covenant to a former employer relating to the right of any such contractor to be providing services to the Company because of the nature of the Business or to the use of trade secrets or proprietary information of others. No employee of the Company has given notice to the Company and, to the knowledge of the Company, no employee of the Company intends to terminate his or her employment with the Company. The employment of each of the employees of the Company is "at will" (except for non-U.S. employees of the Company located in a jurisdiction that does not recognize the "at will" employment concept) and the Company does not have any obligation to provide any particular form or period of notice prior to terminating the employment of any of its employees. As of the Agreement Date, the Company has not, and to the knowledge of Company, no other Person has, (i) entered into any Contract that obligates or purports to obligate Parent to make an offer of employment to any present or former employee or consultant of the Company and/or (ii) promised or otherwise provided any assurances (contingent or otherwise) to any present or former employee or consultant of the Company of any terms or conditions of employment with Parent following the Effective Time, except with respect

to the Employment Offer Documents.

(l) The Company has provided to Parent a true, correct and complete list of the names, positions and rates of compensation of all officers, directors and employees of the Company, showing each such individual's name, position, annual remuneration, status as exempt/non-exempt and bonuses and fringe benefits for the current fiscal year and the most recently completed fiscal year. The Company has no employees or service providers providing services outside of the United States. The Company has provided to Parent a true, correct and complete list of all of its consultants, advisory board members and independent contractors and, for each, such individual's compensation and the initial date of such individual's engagement and whether such engagement has been terminated by written notice by either party thereto.

(m) There are no performance improvements or disciplinary actions contemplated or pending against any of the employees of the Company.

(n) The Company is in compliance in all material respects with the Worker Adjustment Retraining Notification Act of 1988, as amended, or any similar state or local Applicable Law, including the New York State Worker Adjustment and Retraining Notification Act (the "WARN Act"). In the past two years, (i) The Company has not effectuated a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of its business, (ii) there has not occurred a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the Company and (iii) The Company has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state, local or foreign Applicable Law. The Company has not caused any of its employees to suffer an "employment loss" (as defined in the WARN Act) during the 90-day period immediately preceding the Agreement Date.

(o) Except as contemplated by the Employment Offer Documents, Section 4.9(d) or as described on Schedule 2.2(c) of the Company Disclosure Schedule, none of the execution, delivery and performance of this Agreement, the consummation of the Transactions , any termination of employment or service and any other event in connection therewith or subsequent thereto will, individually or together or with the occurrence of some other event (whether contingent or otherwise), (i) result in any material payment or benefit (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due or payable, or required to be provided, to any current or former employee, director, independent contractor or consultant, (ii) materially increase the amount or value of any benefit or compensation otherwise payable or required to be provided to any current or former employee, director, independent contractor or consultant, (iii) result in the acceleration of the time of payment, vesting or funding of any such benefit or compensation, (iv) increase the amount of compensation due to any Person or (v) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any Person.

2.12 Interested Party Transactions. None of the officers and directors of the Company and, to the knowledge of the Company, none of the other employees of the Company and any Company Shareholders holding more than 5% of the outstanding Company Common Stock, and, to the knowledge of the Company, none of the immediate family members of any of the foregoing, (i) has directly or indirectly a greater than 5% ownership interest, or material participation or royalty interest, in, or is an officer, director or employee of any firm, partnership, entity or corporation that competes in any material respect with, or does any material business with, the Company, (ii) is a party to, or to the knowledge of the Company, otherwise directly or indirectly interested in, any Contract to which the Company is a party or by which the Company or any of its assets is bound or (iii) to the knowledge of the Company, has any interest in any material property, real or personal, that is used in the Business (other than rights of

Company Shareholders under Applicable Law), in each case except for (A) Contracts with respect to compensation (including benefits) for services as an officer, director or employee of the Company and (B) Contracts between the Company and the Company Shareholders that were entered into on an arm's length basis and in the ordinary course of business consistent with past practice.

2.13 Insurance. The Company maintains the policies of insurance and bonds set forth in Schedule 2.13 of the Company Disclosure Schedule. Schedule 2.13 of the Company Disclosure Schedule sets forth the name of the insurer under each such policy and bond, the type of policy or bond, the coverage amount and any applicable deductible as of the Agreement Date as well as all material claims made under such policies and bonds in the last two years. The Company has provided to Parent true, correct and complete copies of all such policies of insurance and bonds issued at the request or for the benefit of the Company. There is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been timely paid and the Company is otherwise in compliance in all material respects with the terms of such policies and bonds. All such policies and bonds remain in full force and effect in accordance with their terms.

2.14 Books and Records. The Company has provided to Parent true, correct and complete copies of (i) all Material Contracts, (ii) the Certificate of Incorporation and the Bylaws, each as currently in effect, (iii) the minute books and stock ledgers of, or equivalent records with respect to ownership of Equity Interests in, the Company and (iv) Company Authorizations. The minute books of the Company provided to Parent accurately reflect in all material respects all meetings of the Board of Directors and of the Company Shareholders or actions by written consent for the five years prior to the Agreement Date.

2.15 Material Contracts.

(a) Schedules 2.15(a)(i) through (xxiv) of the Company Disclosure Schedule set forth a list of each of the following Contracts to which the Company is a party (the "Material Contracts"):

(i) any Contract with a Significant Customer or a Significant Supplier;

(ii) any Contract that provided or provides for cash payments by or to the Company (or under which the Company has made or received such payments) in an aggregate amount of $75,000 or more in calendar year 2012 or anticipates (or should reasonably be expected to anticipate) making or receiving in calendar year 2013;

(iii) any dealer, distributor or similar agreement, or any Contract providing for the grant of rights to reproduce, license, market or sell the Company Products to any other Person or relating to the advertising or promotion of the Business or pursuant to which any third parties advertise on any websites operated by the Company (other than Contracts that are cancelable without any Liability by the Company with not more than 60 days' notice);

(iv) (A) any joint venture Contract, (B) any Contract that involves a sharing of revenues, profits, cash flows, expenses or losses with other Persons and (C) any Contract that involves the payment of royalties to any other Person;

(v) any Contract for or relating to the employment or service of any director, officer, employee, consultant or beneficial owner of more than 5% of the total shares of Company Common Stock or any other type of Contract with any of its officers, employees or consultants or beneficial owners of more than 5% of the total shares of Company Common Stock, as the case may be, that are not terminable at will by the Company without any Liability (other than accrued

base salary, accrued commissions, accrued vacation pay and legally mandated benefits);

(vi) any Contract (A) 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 Company IP Rights, (B) containing any non-competition covenants or other restrictions relating to the Company Products or Company IP Rights or (C) that limits or would limit, in any material respect, the freedom of the Company or any of its successors or assigns or their respective Affiliates (including Parent and its Affiliates following the consummation of the Merger) to (I) 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 the Company IP Rights, or to make use of any Company IP Rights, including any grants by the Company of exclusive rights or licenses or (II) sell, distribute or manufacture any products or services or to purchase or otherwise obtain any software, components, parts or services;

(vii) any standstill or similar agreement containing provisions prohibiting a third party from purchasing Equity Interests of the Company or assets of the Company or otherwise seeking to influence or exercise control over the Company;

(viii) other than "shrink wrap" and similar generally available commercial end-user licenses to software that have an individual acquisition cost of $5,000 or less, 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 Rights that is necessary for the development, marketing or licensing of the Company Products;

(ix) other than Ordinary Course Agreements, any license, sublicense or other Contract to which the Company is a party pursuant to which any Person is authorized to use any Company-Owned IP Rights;

(x) 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 Company-Owned IP Rights used in the Business as currently conducted, or pursuant to which the Company agrees to encumber, transfer or sell rights in or with respect to any Company-Owned IP Rights used in the Business as currently conducted;

(xi) 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 (other than Contracts that are cancelable without any Liability by the Company with not more than 60 days' notice);

(xii) 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 have been provided to Parent);

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

(xiv) any Contract to license or authorize any third party to manufacture or reproduce any of the Company Products or Company IP Rights;

(xv) any litigation settlement agreement;

(xvi) any Company Product warranty;

(xvii) any Contract or plan (including any stock option, merger and/or stock bonus plan) relating to the sale, issuance, grant, exercise, award, purchase, repurchase or redemption of any shares of Company Common Stock or any other securities of the Company or any options, warrants, convertible notes or other rights to purchase or otherwise acquire any such shares of stock, other securities or options, warrants or other rights therefor, except for the repurchase rights disclosed on Schedule 2.2(a) of the Company Disclosure Schedule;

(xviii) any Contract with any labor union or any collective bargaining agreement or similar contract with its employees;

(xix) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(xx) any Contract of guarantee, surety, support, indemnification (other than pursuant to (and in the form of) its standard customer agreements, copies of which have been provided to Parent), assumption or endorsement of, or any similar commitment with respect to, the Liabilities or indebtedness of any other Person;

(xxi) any Contract for capital expenditures in excess of $75,000 in the aggregate;

(xxii) any Contract pursuant to which the Company is a lessor or lessee of any real property or any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property involving expenditures in excess of $75,000 per annum (other than Contracts that are cancelable without any Liability by the Company with not more than 60 days' notice);

(xxiii) any Contract pursuant to which the Company has acquired a business or entity, or material assets of a business or entity, whether by way of merger, consolidation, purchase of stock, purchase of assets, license or otherwise; and

(xxiv) 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 (each a "Government Contract").

(b) All Material Contracts are in written form. All of the Material Contracts are legal, valid, binding and enforceable obligations of the Company and, to the knowledge of the Company, each of the other parties thereto, in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy and other similar Applicable Law 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, to the knowledge of the Company, event, occurrence, condition or act, with respect to the Company or, to the knowledge of the Company, with respect to any other contracting party, that, with the giving of notice, the lapse of time or the happening of any other event or condition, would reasonably be expected to become a default or event of default under any Material Contract. The Company has not received any written notice or other communication regarding any actual or possible violation or breach of, default under any Material Contract.

2.16 Transaction Fees. Other than Berenson & Company, no broker, finder, financial advisor, investment banker or similar Person is entitled to any brokerage, finder's or other fee or commission in connection with the origin, negotiation or execution of this Agreement or in connection with the Transactions.

2.17 Foreign Corrupt Practices. None of the Company and, to the knowledge of the Company, its Representatives and any other Person acting for or on behalf of the Company, has directly or indirectly (a) made or attempted to make or promised any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of what form, whether in money, property, or services (i) to obtain favorable treatment for business or Contracts secured, (ii) to pay for favorable treatment for business or Contracts secured or (iii) to obtain special concessions or for special concessions already obtained, in each case of clauses (i), (ii) and (iii), in violation of Applicable Law (including the Foreign Corrupt Practices Act) or (b) established or maintained any fund that has not been recorded in the books and records of the Company.

2.18 Environmental, Health and Safety Matters.

(a) The Company is in compliance in all material respects with all Environmental, Health and Safety Requirements in connection with the ownership, use, maintenance or operation of its business or assets or properties. There are no pending, or to the knowledge of the Company, any threatened allegations by any Person that the properties or assets of the Company are not, or that its business has not been conducted, in compliance in all material respects with all Environmental, Health and Safety Requirements.

(b) The Company has made available to Parent a copy of all studies, audits, assessments or investigations containing material information concerning compliance with, or Liability or obligations under, Environmental, Health and Safety Requirements affecting the Company that are in the possession or control of the Company, each of which is identified in Schedule 2.18 of the Company Disclosure Schedule.

2.19 Export Control Laws. The Company has conducted its export transactions in accordance in all material respects with applicable provisions of U.S. export and re-export controls, including the Export Administration Act and Regulations, the Foreign Assets Control Regulations, the International Traffic in Arms Regulations and other controls administered by the U.S. Department of Commerce and/or the U.S. Department of State and all other applicable import/export controls in other countries in which the Company conducts business. Without limiting the foregoing: (i) the Company has obtained all export and import licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings with any Governmental Entity required for (A) the export, import and re-export of products, services, software and technologies and (B) releases of technologies and software to foreign nationals located in the United States and abroad (collectively, "Export Approvals"), (ii) the Company is in compliance in all material respects with the terms of all applicable Export Approvals and (iii) there are no pending or, to the knowledge of the Company, threatened claims against the Company with respect to such Export Approvals.

2.20 Customers. The information set forth in Schedule 2.20 of the Company Disclosure Schedule is true and correct in all material respects.

2.21 Suppliers. The Company has provided Parent with a list of the 20 largest suppliers of products and/or services to the Company, based on amounts paid or payable in the year ended December 31, 2012 (each, a "Significant Supplier"). The Company does not have any outstanding material disputes concerning any products and/or services provided by any Significant Supplier to the Company or the

payment by the Company therefor. Each Significant Supplier is listed on Schedule 2.21 of the Company Disclosure Schedule. The Company has not received any written notice from any Significant Supplier that such supplier shall not continue as a supplier to the Company (or the Surviving Corporation or Parent) after the Closing or that such Significant Supplier intends to terminate or materially modify its existing Contracts with the Company (or the Surviving Corporation or Parent).

2.22 Shareholder Notice. The Company has prepared the Shareholder Notice and other notices or materials provided to the Company Shareholders in connection with the obtaining the Company Shareholder Approval and any amendment or supplement thereto in good faith and none of such materials or notices contain any untrue statement of material fact.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub represent and warrant to the Company, as of the Agreement Date and as of the Closing Date, as follows:

3.1 Organization and Standing. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Neither Parent nor Merger Sub is in violation of any of the provisions of its articles or certificate of incorporation, as applicable, or bylaws or equivalent organizational or governing documents. Each of Parent and Merger Sub has the corporate power to own, operate and lease its properties and to conduct their respective businesses 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 a material adverse effect with respect to Parent.

3.2 Capitalization of Merger Sub. The authorized capital stock of Merger Sub consists solely of 100 shares of common stock, par value $0.0001 per share, all of which are issued and outstanding and held by Parent and entitled to vote with respect to the approval and adoption of this Agreement.

3.3 Authority; Non-contravention.

(a) Each of Parent and Merger Sub 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 Parent and Merger Sub. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and, assuming the due execution and delivery of this Agreement by the other parties hereto, constitutes the valid and binding obligation of Parent and Merger Sub enforceable against Parent and Merger Sub, respectively, in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar Applicable Law 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 of this Agreement by Parent and Merger Sub do not, and the consummation of the Transactions 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 a benefit under, or require any consent, approval or waiver from any Person pursuant to, (i) any provision of the articles or certificate of incorporation, as applicable, or bylaws or other equivalent organizational or governing documents of Parent and Merger Sub, in each case as amended to date, (ii) any Contract of Parent or Merger Sub applicable to any of their material assets or (iii) Applicable Law, except where such conflict, violation, default, termination, cancellation or

acceleration, individually or in the aggregate, would not be material to Parent's or Merger Sub's ability to consummate the Merger and the other Transactions in accordance with this Agreement and Applicable Law or to perform their respective obligations under this Agreement.

(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 Parent or Merger Sub in connection with the execution and delivery of this Agreement or the consummation of the Transactions that would reasonably be expected to adversely affect the ability of Parent or Merger Sub to consummate the Merger or any of the other Transactions in accordance with this Agreement and Applicable Law, except for the filing of the Certificate of Merger, as provided in Section 1.1(d), and the adoption of this Agreement by Parent as the sole shareholder of Merger Sub.

3.4 No Prior Merger Sub Operations. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the Transactions.

3.5 Litigation. There is no Proceeding pending before any Governmental Entity, or, to the knowledge of Parent, threatened against Parent or Merger Sub or any of their respective assets or any of their respective directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with Parent or Merger Sub) that would reasonably be expected to adversely affect the ability of Parent or Merger Sub to consummate the Merger or any of the other Transactions in accordance with this Agreement and Applicable Law. There is no Order against Parent or Merger Sub, any of their respective assets or, to the knowledge of Parent, any of their respective directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company) seeking or purporting to enjoin or restrain the execution, delivery and performance by Parent or Merger Sub of this Agreement or the consummation of the Merger or the other Transactions in accordance with this Agreement and Applicable Law.

3.6 Funds. Parent has, and will have available to it on the Closing Date, all funds necessary to consummate the Transactions and to perform its obligations hereunder (including all payments to be made pursuant to Sections 1.4, 1.10 and 1.11).

ARTICLE IV
ADDITIONAL AGREEMENTS, REPRESENTATIONS AND WARRANTIES

4.1 Board Recommendation, Shareholder Approval and Shareholder Notice.

(a) The Board of Directors shall unanimously recommend that the Company Shareholders vote in favor of the adoption of this Agreement, and neither the Board of Directors nor any committee thereof shall withhold, withdraw, amend or modify, or propose or resolve to withhold, withdraw, amend or modify in a manner adverse to Parent, its recommendation that the Company Shareholders vote in favor of the adoption of this Agreement.

(b) The Company shall use its reasonable best efforts in accordance with this Agreement, the NYBCL, the Certificate of Incorporation and the Bylaws to obtain the Requisite Shareholder Approval. The Company shall use its reasonable best efforts to obtain Written Consents executed by each Company Shareholder. Upon obtaining either the Company Shareholder Approval or the Requisite Shareholder Approval, the Company shall promptly deliver copies of the executed Written Consents or other documents evidencing the obtainment of the Company Shareholder Approval and the Requisite Shareholder Approval, respectively, to Parent.

(c) Promptly (and in any case within five Business Days) after the Company obtains the Company Shareholder Approval, the Company shall mail to each Company Shareholder other than the Consenting Shareholders, a notice (as it may be amended or supplemented from time to time, the "Shareholder Notice") comprising (i) the notice contemplated by Section 615 of the NYBCL of the taking of a corporate action without a meeting by less than a unanimous written consent and (ii) the notice contemplated by Section 623 of the NYBCL. The Shareholder Notice shall include (x) a statement to the effect that the Board of Directors had unanimously recommended that the Company Shareholders vote in favor of the adoption of this Agreement and (y) such other information as the Company may determine is required or advisable under the NYBCL to be included therein. Prior to its mailing, the Shareholder Notice shall be in a form that is reasonably acceptable to Parent, and, following its mailing, no amendment or supplement to the Shareholder Notice shall be made by the Company without the approval of Parent (not to be unreasonably withheld, conditioned or delayed), except for such amendments or supplements as may be required by Applicable Law. Each of Parent and Merger Sub agrees to provide promptly to the Company such information concerning their respective businesses, financial statements and affairs as, in the reasonable judgment of the Company or its counsel, may be required or advisable to be included under the NYBCL in the Shareholder Notice or in any amendment or supplement thereto, and Parent and the Company agree to cause their respective Representatives to cooperate in the preparation of the Shareholder Notice and any amendment or supplement thereto. Prior to the Agreement Date, the Company has prepared, with the cooperation of Parent, a draft of the Shareholder Notice that is in a form reasonably acceptable to Parent.

4.2 Confidentiality; Public Disclosure.

(a) The parties hereto acknowledge that Parent and the Company have previously executed a non-disclosure agreement, dated December 18, 2012 (as amended from time to time, the "Confidentiality Agreement"), which shall continue in full force and effect in accordance with its terms. Each party hereto agrees that it and its Representatives shall hold the terms of this Agreement, and the fact of this Agreement's existence, in strict confidence. At no time shall any party hereto disclose any of the terms of this Agreement (including the economic terms) or any non-public information about a party hereto to any other Person without the prior written consent of the party hereto about which such non-public information relates. Notwithstanding anything to the contrary in the foregoing, a party hereto shall be permitted to disclose any and all terms of this Agreement to its financial, tax and legal advisors (each of whom is subject to a similar obligation of confidentiality), and no party hereto shall be required to keep confidential any information that (i) is known or available through other lawful sources not bound by a confidentiality agreement or other binding legal or contractual obligation, (ii) is or becomes in the public domain through no fault of the receiving party or its agents or (iii) is requested, required or advisable to be disclosed in compliance with Applicable Law; provided that the other parties hereto are given reasonable prior notice or consent thereto (unless prohibited by Applicable Law). The Shareholders' Agent hereby agrees to be bound by the terms and conditions of the Confidentiality Agreement to the same extent as though the Shareholders' Agent were a party thereto. With respect to the Shareholders' Agent and subject to the limitations in this Section 4.2(a), as used in the Confidentiality Agreement, the term "Confidential Information" shall also include information relating to the Transactions received by the Shareholders' Agent after the Closing or relating to the period after the Closing.

(b) The Company shall not issue any press release or other public communications relating to the terms of this Agreement or the Transactions or use Parent's name or refer to Parent directly or indirectly in connection with Parent's relationship with the Company in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of Parent, unless required by Applicable Law (as reasonably determined by such party after consultation with legal counsel) and except as reasonably necessary for the Company to obtain the Company Shareholder Approval and the Requisite

Shareholder Approval and the other consents and approvals of the Company Shareholders and other third parties contemplated by this Agreement. Notwithstanding anything to the contrary contained herein or in the Confidentiality Agreement, Parent may make such public communications regarding this Agreement or the Transactions as Parent may determine is reasonably appropriate.

4.3 Reasonable Best Efforts. Each of the parties hereto agrees to use its reasonable best efforts, and to 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, appropriate or desirable in accordance with Applicable Law to consummate and make effective, in the most expeditious manner practicable, the Merger and the other Transactions, including the satisfaction of the respective conditions set forth in Article V, and including to execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the Merger and the other Transactions. Without limiting the generality of the foregoing and subject to Section 4.6, the Company, on the one hand, and Parent and Merger Sub, on the other hand, shall each furnish to the other such necessary information and reasonable assistance as the other party may reasonably request in connection with the foregoing.

4.4 Third-Party Consents. The Company shall use all reasonable efforts to obtain prior to the Closing, and deliver to Parent at or prior to the Closing, all consents, waivers and approvals under each Contract listed or described on Schedule 2.3(b)(ii)(B) of the Company Disclosure Schedule.

4.5 Litigation. The Company will (i) notify Parent in writing promptly after learning of any material Proceeding initiated by or against it, or known by the Company to be threatened against the Company or any of the Company's directors, officers or employees or the Company Shareholders in their capacity as such (a "New Litigation Claim"), (ii) notify Parent of ongoing material developments in any New Litigation Claim and (iii) consult in good faith with Parent regarding the conduct of the defense of any New Litigation Claim.

4.6 Access to Information.

(a) During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Effective Time, the Company shall afford Parent and its Representatives reasonable access during business hours to (i) the Company's properties, personnel, books, Contracts and records (including the Company's Tax Returns, Tax elections and all other records and workpapers relating to Taxes, receipts for any Taxes paid to foreign Tax Authorities, and information regarding any deferred intercompany gain or loss with respect to transactions to which the Company has been a party) and (ii) all other information concerning the business, properties and personnel of the Company, in each case of (i) and (ii), as Parent may reasonably request, unless the disclosure of any such information would jeopardize attorney-client privilege or the attorney-client work product doctrine. Parent shall, and shall cause its Affiliates and Representatives to, hold any information regarding the Company that is non-public in confidence in accordance with the terms of Section 4.2 and the Confidentiality Agreement.

(b) Subject to compliance with Applicable Law, from the Agreement Date until the earlier of the termination of this Agreement and the Closing, the Company shall confer from time to time as reasonably requested by Parent with one or more Representatives of Parent to discuss any material changes or developments in the operational matters of the Company and the general status of the ongoing operations of the Company.

(c) No information obtained by Parent during the pendency of the Transactions in any investigation pursuant to this Section 4.6 shall affect or be deemed to modify any representation,

warranty, covenant, agreement, obligation or condition set forth herein.

4.7 Spreadsheet. The Company has prepared and delivered, or shall prepare and deliver, to Parent, in accordance with Section 4.10, a spreadsheet (the "Spreadsheet") in the form provided by Parent prior to the Closing and reasonably acceptable to Parent and the Company, which spreadsheet shall be dated as of the Closing Date and shall set forth all of the following information (in addition to the other required data and information specified therein), as of immediately prior to the Closing: (a) the names of all the Converting Holders and, where available, their respective addresses and taxpayer identification numbers, (b) the number and type of shares of Company Common Stock held by, or subject to the Company Options held by, such Converting Holders and, in the case of outstanding shares, the respective certificate numbers, (c) the number of shares of Company Common Stock subject to and the exercise price per share in effect for each such Company Option, (d) the vesting status with respect to such Company Options, (e) the calculation of Fully-Diluted Company Common Stock, Common Per Share Merger Consideration and the Aggregate Exercise Price, (f) the calculation of aggregate cash amounts payable to each such Converting Holder pursuant to Section 1.3(a) and (g) the calculation of each Converting Holder's Pro Rata Share of the Escrow Amount and the Shareholders' Agent Expense Amount.

4.8 Expenses. Whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the Transactions (including Transaction Expenses) shall be paid by the party incurring such expense; provided that (i) Parent shall pay or cause to be paid all Transaction Expenses as provided in Section 1.10, (ii) Parent shall pay the fees, costs and expenses of the Paying Agent and the Escrow Agent, (iii) the fees and expenses of the Accounting Firm, if any, shall be allocated as provided in Section 1.6(e) and (iv) the fees and expenses of the arbitrator, if any, shall be allocated as provided in Section 7.6(d).

4.9 Certain Employment Matters.

(a) Employees. Subject to Parent's policies and procedures, including background checks and confirmation of immigration status of each such employee, Parent shall determine following the Closing whether to continue the employment of the Company's employees. Each such employee (other than the Key Employees) who accepts an offer of employment with Parent, executes and delivers the Employment Offer Documents and any other required documents and actually transfers to employment with Parent or continues to be employed by the Company following the Closing is hereafter referred to as a "Continuing Employee." The Continuing Employees will be employed by Parent on an at-will basis (terminable with or without cause and with or without notice) and otherwise on terms of employment determined by Parent. Continuing Employees shall receive standard employee benefits offered by Parent to its employees of comparable status. Parent is not under any obligation to retain any employee of the Company, or provide any such employee with any particular benefits.

(b) Employee Plans. The Company shall take all actions that may be, reasonably requested by Parent in writing prior to the Closing Date with respect to (i) causing one or more Employee Plans to terminate as of the Closing Date, or, with respect to the Company 401(k) plan, as of the date immediately preceding the Closing Date, (ii) causing benefit accrual or entitlement under any Employee Plan to cease as of the Closing Date or (iii) causing the continuation on and after the Closing Date of any insurance policy or arrangement relating to any Employee Plan.

(c) 401(k) Plan. As of the Closing, Parent, or one of Parent's Affiliates, shall maintain a defined contribution plan that (i) is intended to meet the requirements of Section 401(a) of the Code and (ii) includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code (such plan, the "Parent 401(k) Plan"). Effective as of the Closing, all Continuing Employees

and Key Employees who were eligible to participate in the Company 401(k) Plan immediately prior to the Closing shall be eligible to participate in the Parent 401(k) Plan according to the terms of such plans.

(d) Cash-Out of Paid Time Off. The Company has paid or caused to be paid, or the Company shall pay or cause to be paid, prior to the Closing to each of the employees of the Company an amount equal to such employee's accrued but unused vacation or paid time off, which amounts are set forth on Schedule 4.9(d) of the Company Disclosure Schedule. Following the Closing, each Key Employee and each Continuing Employee shall begin to accrue paid time off at the rate that would apply to an employee that had been employed by Parent for the same time period as such Key Employee or Continuing Employee was employed by the Company.

4.10 Certain Closing Certificates and Documents. The Company has prepared and delivered, or shall prepare and deliver, to Parent a draft of each of the Company Closing Financial Certificate and the Spreadsheet not later than three Business Days prior to the Closing Date and a final version of the Company Closing Financial Certificate and the Spreadsheet to Parent not later than two Business Days prior to the Closing Date. In the event that Parent has notified or notifies the Company that there are reasonably apparent errors in the drafts of the Company Closing Financial Certificate and the Spreadsheet delivered not later than four Business Days prior to the Closing Date, Parent and the Company have discussed or shall discuss such errors in good faith and the Company Closing Financial Certificate and the Spreadsheet has been or shall be revised to reflect any changes thereto as may be agreed by Parent and the Company, which changes have been or shall be reflected in the final versions of the same delivered by the Company in accordance with this Section 4.10. Without limiting the foregoing or Section 4.7, the Company has provided or shall provide to Parent, together with the Company Closing Financial Certificate and the Spreadsheet, reasonable supporting information to evidence the calculations, amounts and other matters set forth in the Company Closing Financial Certificate and the Spreadsheet.

4.11 Tax Matters. Each of Parent, the Shareholders' Agent, the Company Securityholders and the Company shall cooperate fully, as and to the extent reasonably requested by any of the others, in connection with the filing of Tax Returns and any Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon request therefor) the provision of records and information reasonably relevant to any such Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Parent, the Company, the Shareholders' Agent and the Company Securityholders agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations of the respective taxable periods, and to abide by all record retention agreements entered into with any Tax Authority.

4.12 Indemnification; Insurance.

(a) If the Merger is consummated, then until the sixth anniversary of the Closing Date, Parent will cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company to its present and former directors and officers determined as of immediately prior to the Effective Time (the "Company Indemnified Persons") pursuant to indemnification agreements with the Company in effect on the Agreement Date and pursuant to the Certificate of Incorporation or the Bylaws, in each case, in effect as of immediately prior to the Effective Time (the "Company Indemnification Provisions"), with respect to claims arising out of or resulting from acts or omissions occurring at or prior to the Effective Time that are asserted after the Effective Time; provided that Parent's and the Surviving Corporation's obligations under this Section 4.12(a) shall not apply to any claim based on a claim for indemnification made by an Indemnified Person pursuant to Article VII. Notwithstanding anything to the contrary contained in the Company Indemnification Provisions, no Company Indemnified Person shall be entitled to coverage under any Parent director and officer insurance policy or errors and omission policy

unless such Company Indemnified Person is separately eligible for coverage under such policy pursuant to Parent's policies and procedures and the terms of such insurance policy.

(b) Prior to the Closing, at the discretion of the Company, the Company may purchase tail insurance coverage (the "D&O Tail Insurance") for the Company Indemnified Persons in a form reasonably acceptable to the Company and Parent. If the D&O Tail Insurance is purchased by the Company prior to the Closing, then, from and after the Closing, Parent shall, and shall cause the Surviving Corporation to, maintain the D&O Tail Insurance in full force and effect and continue to honor the obligations thereunder until the sixth anniversary of the Closing Date; provided that nothing in this Section 4.12(b) shall require Parent to pay any amounts in respect of such D&O Tail Insurance.

(c) This Section 4.12 (i) shall survive the consummation of the Merger, (ii) is intended to benefit each Company Indemnified Person and their respective heirs, (iii) is in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have against Parent or the Surviving Corporation first arising after the earlier of the Closing Date and the termination of this Agreement by contract or otherwise, (iv) shall be binding on all successors and assigns of Parent and the Surviving Corporation, as applicable, and proper provision shall be made so that such successors and assigns shall assume the obligations set forth in this Section 4.12, (v) shall be enforceable by the Company Indemnified Persons and (vi) shall not be terminated or modified in such a manner as to adversely affect the rights of any Company Indemnified Person under this Section 4.12 without the written consent of such affected Company Indemnified Person.

ARTICLE V
CONDITIONS TO THE MERGER

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

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

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

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

(b) Receipt of Closing Deliveries. The Company shall have received each of the agreements, instruments, certificates and other documents set forth in Section 1.2(a).

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

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

(b) Receipt of Closing Deliveries. Parent shall have received each of the agreements, instruments, certificates and other documents set forth in Section 1.2(b).

(c) No Material Adverse Effect. There shall not have occurred a Material Adverse Effect with respect to the Company.

(d) Requisite Shareholder Approval. This Agreement shall have been duly and validly adopted under the NYBCL, the Certificate of Incorporation and the Bylaws, each as in effect at the time of such adoption, by holders of outstanding Company Common Stock representing at least 95% of all shares of Company Common Stock outstanding as of immediately prior to the Closing and at least 95% of the voting power of all shares of Company Common Stock outstanding as of immediately prior to the Closing (collectively, the "Requisite Shareholder Approval").

ARTICLE VI
TERMINATION

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

(a) by mutual written consent duly authorized by Parent and the Board of Directors;

(b) by either Parent or the Company, by written notice to the other, if the Closing shall not have occurred within 90 days following the Agreement Date or such other date that Parent and the Company may agree upon in writing (the "Termination Date"); provided, that the right to terminate this Agreement under this Section 6.1(b) shall not be available to any party whose breach of any covenant, agreement or obligation hereunder will have been the principal cause of, or will have directly resulted in, the failure of the Closing to occur on or before the Termination Date;

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

(d) by Parent, by written notice to the Company, if (i) Parent is not in material

breach of its obligations under this Agreement and the Company shall have materially breached any representation, warranty, covenant, agreement or obligation contained herein and such breach shall not have been cured within 10 Business Days after receipt by the Company of written notice of such breach and, if not cured within such period and at or prior to the Closing, such breach would result in the failure of any of the conditions set forth in Section 5.1 or Section 5.3 to be satisfied (provided that no such cure period shall be available or applicable to any such breach that by its nature cannot be cured), (ii) the Company shall have breached Section 4.1 or (iii) the Company Shareholder Approval is not obtained within two hours following the execution of this Agreement; or

(e) by the Company, by written notice to Parent, if the Company is not in material breach of its obligations under the Agreement and Parent shall have materially breached any representation, warranty, covenant, agreement or obligation contained herein and such breach shall not have been cured within 10 Business Days after receipt by Parent of written notice of such breach and, if not cured within such period and at or prior to the Closing, such breach would result in the failure of any of the conditions set forth in Section 5.1 or Section 5.2 to be satisfied (provided that no such cure period shall be available or applicable to any such breach that by its nature cannot be cured).

6.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 6.1, this Agreement shall forthwith become void and there shall be no Liability on the part of Parent, Merger Sub, the Company or their respective officers, directors, shareholders or Affiliates; provided that (a) Section 4.2 (Confidentiality; Public Disclosure), Section 4.8 (Expenses), this Section 6.2 (Effect of Termination), Article VIII (General Provisions) and any related definition provisions in or referenced in Exhibit A and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement and (b) nothing herein shall relieve any party hereto from Liability in connection with any breach of such party's representations, warranties, covenants, agreements or obligations contained herein.

ARTICLE VII
ESCROW FUND AND INDEMNIFICATION

7.1 Escrow Fund.

(a) Parent shall withhold the Escrow Amount from the Merger Consideration payable pursuant to Section 1.3(a) and, at the Closing, shall deposit the Escrow Amount, by wire transfer of immediately available funds, with Wells Fargo Bank, National Association, or another institution selected by Parent and reasonably satisfactory to the Company, as escrow agent (the "Escrow Agent") (the aggregate amount of cash so held by the Escrow Agent from time to time, including all accumulated earnings thereon, the "Escrow Fund"), which Escrow Fund shall be governed by this Agreement and the escrow agreement in substantially the form attached hereto as Exhibit F with such changes as Parent and the Shareholders' Agent may agree in writing (the "Escrow Agreement"). The Escrow Fund shall constitute security for the benefit of Parent (on behalf of itself or any other Indemnified Person) with respect to any Indemnifiable Damages pursuant to the indemnification obligations of the Converting Holders under this Article VII and any payment required to be made to Parent pursuant to Section 1.6(d). The Escrow Agent shall hold the Escrow Fund until 11:59 p.m. Pacific time on the date (the "Escrow Release Date") that is 18 months after the Effective Time (the "Escrow Period").

(b) Within three Business Days following the Escrow Release Date, the Escrow Agent will distribute to each Converting Holder such Converting Holder's Pro Rata Share of the Escrow Fund; provided that if there are any claims for indemnification specified in any Claim Certificate delivered to the Shareholders' Agent prior to the Escrow Release Date in accordance with this Article VII that are pending on the Escrow Release Date, the applicable portion of the Escrow Fund that is subject to

any such claims shall not be released until such applicable claims are finally resolved and satisfied. Any portion of the Escrow Fund held by the Escrow Agent following the Escrow Release Date with respect to pending but unresolved claims for indemnification that is not awarded to Parent upon the resolution of such claims shall be distributed by the Escrow Agent to the Converting Holders within three Business Days following resolution of such claims and in accordance with each such Converting Holder's Pro Rata Share of such portion of the Escrow Fund.

7.2 Indemnification. Subject to the limitations set forth in this Article VII, from and after the Closing, the Converting Holders shall severally (according to such Converting Holder's Pro Rata Share) but not jointly indemnify and hold harmless Parent, Merger Sub and the Company and their respective officers, directors, agents and employees, members, and Affiliates and each Person, if any, who controls or may control Parent 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 (including any consequential, special, punitive or exemplary damages; provided that any such damages that are special, punitive or exemplary shall only be so included to the extent that an Indemnified Party actually pays any such damages to a third party; provided, further, that any such damages that are consequential shall only be so included to the extent demonstrable or provable), fees, Taxes, reductions in value, interest, penalties, fines, costs and expenses, including the reasonable costs of investigation and defense and reasonable fees and expenses of counsel, experts and other professionals, directly or indirectly, whether or not due to a Third-Party Claim (collectively, "Indemnifiable Damages"), to the extent arising out of or resulting from (i) any failure of any representation or warranty made by the Company herein or in the Company Disclosure Schedule (including any exhibit or schedule to the Company Disclosure Schedule) to be true and correct as of the Closing Date as though such representation or warranty were made as of the Closing Date (except in the case of representations and warranties that by their terms speak only as of a specific date or dates, which representations and warranties shall be true and correct as of such date or dates), (ii) any breach of, or default in connection with, any of the covenants, agreements or obligations made by the Company herein or in any other agreements contemplated by this Agreement or the Merger, (iii) any inaccuracies in the Spreadsheet, (iv) any payments made with respect to Dissenting Shares and approved by the Shareholders' Agent (such approval to not be unreasonably withheld) to the extent that such payments, in the aggregate, exceed the value of the amounts that otherwise would have been payable pursuant to Section 1.3(a) upon the exchange of such Dissenting Shares, and any interest, costs, expenses and fees incurred by any Indemnified Person in connection with the exercise of any dissenters' or appraisal rights, (v) any amounts or rights due to a Person in connection with the Transactions in respect of any Equity Interest of the Company other than as specifically set forth on the Spreadsheet, (vi) any amounts due to a Person based on a claim that the Board of Directors breached its fiduciary duties in connection with the execution of this Agreement or the consummation of the Merger, (vii) any Indemnifiable Net Cash Shortfall or Indemnifiable Transaction Expenses, (viii) any Pre-Closing Taxes to the extent not included in the calculation of Company Net Working Capital or (ix) any Company Net Working Capital Shortfall. Materiality and knowledge standards or qualifications, qualifications or requirements that a matter be or not be "reasonably expected" or "reasonably likely" to occur and qualifications by reference to the defined term "Material Adverse Effect" in any representation, warranty, covenant, agreement or obligation shall only be taken into account in determining whether a breach of or default in connection with such representation, warranty, covenant, agreement or obligation (or failure of any representation or warranty to be true and correct) exists, and 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.

7.3 Indemnifiable Damage Threshold; Other Limitations.

(a) Notwithstanding anything to the contrary contained herein, no Indemnified Person may make a claim against the Escrow Fund in respect of any claim for Indemnifiable Damages

arising out of or resulting from the matters listed in clause (i) or clause (ix) of Section 7.2 (other than claims arising out of, resulting from or in connection with any failure of any of the Fundamental Representations or the Company's representations and warranties set forth in Section 2.9(q)) unless and until a Claim Certificate (together with any other delivered Claim Certificates) describing Indemnifiable Damages in an aggregate amount greater than $275,000 (the "Threshold Amount") has been delivered, in which case the Indemnified Person may make claims for indemnification and may receive cash from the Escrow Fund for all Indemnifiable Damages (including all amounts below the Threshold Amount). The Threshold Amount shall not apply to any other Indemnifiable Damages.

(b) If the Merger is consummated, recovery from the Escrow Fund shall constitute the sole and exclusive remedy for the indemnity obligations under this Agreement for the matters listed in clause (i), (ii), (viii) or (ix) of Section 7.2, except (i) in the case of fraud or intentional misrepresentation by or on behalf of any Person, (ii) any failure of any of the representations and warranties (A) of the Company contained in Section 2.2 (Capital Structure), Section 2.3(a) (Authority), clauses (A) and (C) of Section 2.3(b)(ii) (Non-contravention) or Section 2.10 (Taxes) or (B) of the Company contained in any certificate delivered to Parent pursuant to this Agreement that are within the scope of those covered by the foregoing Sections (collectively, the "Fundamental Representations") to be true and correct as aforesaid and (iii) as provided in Section 8.10. In the case of all other claims, including claims arising out of, resulting from or in connection with (i) fraud or intentional misrepresentation by or on behalf of the Company and (ii) any failure of any of the Fundamental Representations to be true and correct as aforesaid, after Indemnified Persons have exhausted or made claims upon all amounts of cash held in the Escrow Fund (after taking into account all other claims for indemnification from the Escrow Fund made by Indemnified Persons), each Converting Holder shall have Liability for such Converting Holder's Pro Rata Share of the amount of any Indemnifiable Damages resulting therefrom; provided that such Liability shall be limited to the aggregate amount of cash payable to such Converting Holder pursuant to Section 1.3(a); provided, further, that such limitation of Liability shall not apply to a Converting Holder in the case of (x) fraud or intentional misrepresentation by or on behalf of such Converting Holder or (y) fraud or intentional misrepresentation by or on behalf of the Company in which such Converting Holder participated or had actual knowledge (without regard to the proviso in the definition of "knowledge").

(c) Notwithstanding anything to the contrary contained herein, (i) no Converting Holder shall have any right of indemnification, contribution or right of advancement from Parent, the Surviving Corporation or any other Indemnified Person with respect to any Indemnifiable Damages claimed by any Indemnified Person or any right of subrogation against the Company or the Surviving Corporation with respect to any indemnification of a Indemnified Person by reason of any of the matters set forth in Section 7.2 and (ii) the rights and remedies of the Indemnified Persons after the Effective Time shall not be limited by (x) any investigation or disclosure made by or on behalf of any Indemnified Person prior to the Effective Time regarding any failure, breach or other event or circumstance or (y) any waiver of any condition to the Closing related thereto.

(d) All Indemnifiable Damages shall be calculated net of the amount of any actual recoveries under any existing insurance policies and contractual indemnification or contribution provisions of other agreements in respect of any Indemnifiable Damages incurred by any Indemnified Person; provided that no Indemnified Person shall have any obligation to seek to obtain or continue to pursue any such recoveries. In the event that an Indemnified Person receives an indemnity payment hereunder with respect to any Indemnifiable Damages and subsequently recovers any amounts under any insurance policies or contractual indemnification or contribution agreements that, if received prior to the time of such indemnity payment, would have reduced the amount of such indemnity payment, such Indemnified Person shall promptly make, or cause to be made, appropriate refunds to the Converting Holders of the relevant recovered portion of such indemnity payment to the extent it would have so reduced such indemnity payment; provided that in the event that Indemnified Persons first recover from

the Escrow Fund for any particular Indemnifiable Damages and thereafter recover for the same Indemnifiable Damages pursuant to any existing insurance policies and/or indemnification or contribution provisions of other agreements, and at the time of such recovery there is cash remaining in the Escrow Fund, then the amount recovered pursuant to such existing insurance policies and/or contractual indemnification or contribution provisions that would have reduced such indemnity payment hereunder (up to the amount first recovered from the Escrow Fund) shall be deposited in the Escrow Fund to be governed in accordance with this Agreement and the Escrow Agreement.

7.4 Period for Claims . The period during which claims for Indemnifiable Damages may be made (the "Claims Period") (i) against the Escrow Fund for Indemnifiable Damages arising out of or resulting from the matters listed in clause (i), (ii), (viii) or (ix) of Section 7.2 (other than with respect to any of the Fundamental Representations) shall commence at the Closing and terminate at 11:59 p.m. Pacific time on the last date of the Escrow Period and (ii) for Indemnifiable Damages arising out of or resulting from any other matter shall commence at the Closing and terminate upon the expiration of the applicable statute of limitations . The availability of the Escrow Fund to indemnify the Indemnified Persons will be determined without regard to any right to indemnification that any Converting Holder may have in his or her capacity as an officer, director, employee or agent of the Company and no such Converting Holder will be entitled to any indemnification from the Company or the Surviving Corporation for amounts paid for indemnification under this Article VII.

7.5 Claims.

(a) From time to time during the Claims Period, Parent may deliver to the Shareholders' Agent one or more certificates signed by any officer of Parent (each, a "Claim Certificate"):

(i) stating that an Indemnified Person has incurred, paid, reserved or accrued, or in good faith believes 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 believed by Parent in good faith 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 Parent) 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.

(b) No delay in providing such Claim Certificate within the Claims Period shall affect an Indemnified Person's rights hereunder, unless (and then only to the extent that) the Shareholders' Agent or the Converting Holders are materially prejudiced thereby. Any Claim Certificate may be updated and amended from time to time by Parent delivering an updated or amended Claim Certificate, so long as the delivery of the original Claim Certificate is made within the applicable Claims Period and only in the event that such Claim Certificate, as so updated or amended, continues to satisfy the requirements of Section 7.5(a).

7.6 Resolution of Objections to Claims.

(a) If the Shareholders' Agent does not contest, by written notice to Parent, any claim or claims by Parent made in any Claim Certificate within the 30-day period following receipt of the

Claim Certificate, then the Escrow Agent shall, at Parent's direction, distribute to Parent an amount of cash from the Escrow Fund having a total value equal to the amount of any Indemnifiable Damages corresponding to such claim or claims as set forth in such Claim Certificate.

(b) If the Shareholders' Agent objects in writing to any claim or claims by Parent made in any Claim Certificate within the 30-day period set forth in Section 7.6(a), Parent and the Shareholders' Agent shall attempt in good faith for 30 days after Parent's receipt of such written objection to resolve such objection. If Parent and the Shareholders' Agent shall so agree, a joint written instruction setting forth such agreement shall be prepared, signed by both parties and delivered to the Escrow Agent. Upon receipt of such instruction, the Escrow Agent shall distribute to Parent an amount of cash from the Escrow Fund in accordance with the terms of such joint written instruction.

(c) If no such agreement can be reached during the 30-day period for good faith negotiation set forth in Section 7.6(b), but in any event upon the expiration of such 30-day period, either Parent or the Shareholders' Agent may bring an arbitration in accordance with the terms of Section 8.11 to resolve the matter. The decision of the arbitrator as to the validity and amount of any claim in such Claim Certificate shall be non-appealable, binding and conclusive upon the parties hereto and the Converting Holders, and Parent shall be entitled to instruct the Escrow Agent to distribute to Parent an amount of cash from the Escrow Fund in accordance therewith.

(d) Judgment upon any determination of an arbitrator may be entered in any court having jurisdiction. The parties to an arbitration each shall pay its own expenses and 50% of the expenses and the fees of the arbitrator.

7.7 Shareholders' Agent.

(a) At the Closing, Carl Navarre, Jr. shall be constituted and appointed as the Shareholders' Agent. The Shareholders' Agent shall be the agent for and on behalf of the Converting Holders to: (i) execute, as Shareholders' Agent, this Agreement and any agreement or instrument entered into or delivered in connection with the Transactions, (ii) 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 Converting Holder, to or from Parent (on behalf of itself or any other Indemnified Person) relating to this Agreement or any of the Transactions and any other matters contemplated by this Agreement or by such other agreement, document or instrument (except to the extent that this Agreement expressly contemplates that any such notice or communication shall be given or received by each Converting Holder individually), (iii) review, negotiate and agree to and authorize Parent to reclaim an amount of cash from the Escrow Fund in satisfaction of claims asserted by Parent (on behalf of itself or any other Indemnified Person, including by not objecting to such claims) pursuant to this Article VII, (iv) object to such claims pursuant to Section 7.6, (v) 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 by arbitration, settlement or otherwise, and take or forego any or all actions permitted or required of any Converting Holder or necessary in the judgment of the Shareholders' Agent for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement, (vi) consult with legal counsel, independent public accountants and other experts selected by it, solely at the cost and expense of the Converting Holders; (vii) 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 Converting Holders (other than with respect to the payment of the Merger Consideration less the Escrow Amount) in accordance with the terms hereof and in the manner provided herein and (viii) take all actions necessary or appropriate in the judgment of the

Shareholders' Agent for the accomplishment of the foregoing, in each case without having to seek or obtain the consent of any Person under any circumstance. Parent, Merger Sub and their respective Affiliates (including after the Effective Time, the Surviving Corporation) shall be entitled to rely on the appointment of Carl Navarre, Jr. as the Shareholders' Agent and treat such Shareholders' Agent as the duly appointed attorney-in-fact of each Converting Holder and has having the duties, power and authority provided for in this Section 7.7. The Converting Holders shall be bound by all actions taken and documents executed by the Shareholders' Agent in connection with this Article VII, and Parent and other Indemnified Persons shall be entitled to rely exclusively on any action or decision of the Shareholders' Agent. The Person serving as the Shareholders' Agent may be replaced from time to time by the holders of a majority in interest of the aggregate amount of cash then held in the Escrow Fund upon not less than 30 days' prior written notice to Parent. No bond shall be required of the Shareholders' Agent.

(b) The Shareholders' Agent shall not be liable to any Converting Holder for any act done or omitted hereunder as the Shareholders' Agent while acting in good faith (and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith) and without gross negligence or willful misconduct. The Shareholders' Agent shall serve as the Shareholders' Agent without compensation; provided that the Converting Holders shall severally but not jointly indemnify the Shareholders' Agent and hold him harmless against any loss, Liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Shareholders' Agent and arising out of, resulting from or in connection with the acceptance or administration of his duties hereunder, including all out-of-pocket costs and expenses and fees of attorneys, accountants or other advisors or experts incurred by the Shareholders' Agent in connection with such duties. The Shareholders' Agent shall be entitled to withdraw cash amounts held in the account containing the Shareholders' Agent Expense Amount in reimbursement for such out-of-pocket costs and expenses incurred by the Shareholders' Agent in performing his duties under this Agreement. In the event that the Shareholders' Agent Expense Amount is insufficient to cover the costs, fees and expenses incurred by the Shareholders' Agent in performing his obligations under this Agreement, unless paid directly to the Shareholders' Agent by the Converting Holders, such losses, Liabilities or expenses may be recovered by the Shareholders' Agent from the portion of the Escrow Fund otherwise distributable to the Converting Holders (and not distributed or distributable to an Indemnified Person or subject to a pending indemnification claim of an Indemnified Person) after the expiration of the Escrow Period pursuant to the terms hereof, at the time of distribution, and such recovery will be made from the Converting Holders according to their respective Pro Rata Shares of such losses, Liabilities or expenses.

(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 Shareholders' Agent that is within the scope of the Shareholders' Agent's authority under Section 7.7(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 Converting Holders and shall be final, binding and conclusive upon each such Converting 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 Converting Holder. Parent, Merger Sub, the Surviving Corporation 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 Shareholders' Agent.

(d) In the performance of his duties hereunder, the Shareholders' Agent shall be entitled to rely upon any document or instrument reasonably believed by him to be genuine, accurate as to

content and signed by any Company Securityholder, Parent, Merger Sub, the Paying Agent or the Escrow Agent. The Shareholders' Agent may assume that any Person purporting to give any notice in accordance with the provisions hereof has been duly authorized to do so. If the Shareholders' Agent is required to determine the occurrence of any event or contingency, the Shareholders' Agent may request from any Company Securityholder or any other Person such reasonable additional evidence as the Shareholders' Agent in its sole discretion (provided that Parent and the Company shall only be required to provide such information as is reasonably requested by the Shareholders' Agent in connection with a *bona fide* dispute hereunder) may deem necessary to determine any fact relating to the occurrence of such event or contingency, and may at any time inquire of and consult with others, including any Company Securityholder, and the Shareholders' Agent shall not be liable to any such Company Securityholder for any damages resulting from his delay in acting hereunder pending his receipt and examination of additional evidence requested by him. Notwithstanding any other provision of this Agreement or any other agreement entered into or document delivered in connection with the Transactions, in no event shall the Shareholders' Agent, in his capacity as such, be liable to Parent, Merger Sub, the Company, the Surviving Corporation or any of their respective Representatives or Affiliates (other than for claims arising out of fraud).

(e) The Shareholders' Agent shall designate one or more Persons reasonably acceptable to Parent to serve as successor Shareholders' Agents in the event of his resignation, death, incapacity or bankruptcy, which Person or Persons shall in such event succeed to and become vested with all the rights, powers, privileges and duties of the Shareholders' Agent under this Agreement. Each successor Shareholders' Agent shall designate one or more Persons reasonably acceptable to Parent to serve as successor Shareholders' Agents in the event of such successor Shareholders' Agent's resignation, death, incapacity, bankruptcy or dissolution.

7.8 Third-Party Claims. In the event Parent becomes aware of a claim by a third party (a "Third-Party Claim") that Parent in good faith believes may result in a claim against the Escrow Fund by or on behalf of an Indemnified Person, Parent shall have the right in its sole discretion to conduct the defense of any such Third-Party Claim (and the costs and expenses incurred by Parent in connection with such defense, settlement or resolution (including reasonable attorneys' fees, other professionals' and experts' fees and court or arbitration costs), other than with respect to a Third-Party Claim set forth on Schedule 7.8 of the Company Disclosure Schedule, shall be included in the Indemnifiable Damages for which Parent shall be entitled to receive indemnification pursuant to a claim made hereunder, and such costs and expenses shall constitute Indemnifiable Damages subject to indemnification under Section 7.2 regardless of whether it is ultimately determined that such Third-Party Claim arose out of, resulted from or was in connection with a matter listed in Section 7.2). The Shareholders' Agent shall have the right to receive copies of all pleadings, notices and communications with respect to such Third-Party Claim (other than a Third-Party Claim set forth on Schedule 7.8 of the Company Disclosure Schedule) to the extent that receipt of such documents does not affect any privilege relating to any Indemnified Person, subject to execution by the Shareholders' Agent of Parent's (and, if required, such third party's) standard non-disclosure agreement to the extent that such materials contain confidential or propriety information. However, Parent shall have the right in its sole discretion to determine and conduct the defense of any Third-Party Claim. The Shareholders' Agent and its Affiliates, at their expense, may participate (but not conduct the defense) in any Third-Party Claim or any action related to such Third-Party Claim. Except with the consent of the Shareholders' Agent, which shall not be unreasonably withheld or delayed, no settlement or resolution by Parent of any such Third-Party Claim shall be determinative of the existence of or amount of Indemnifiable Damages relating to such matter. In the event that the Shareholders' Agent has consented to any such settlement or resolution, neither the Shareholders' Agent nor any Converting Holder shall have any power or authority to object under Section 7.6 or any other provision of this Article VII to the amount of any claim by or on behalf of any Indemnified Person against the Escrow Fund for indemnity with respect to such settlement or resolution.

7.9 Treatment of Indemnification Payments. Parent, the Shareholders' Agent and the Converting Holders agree to treat (and cause their respective Affiliates to treat) any payment received by the Indemnified Persons pursuant to this Article VII as adjustments to the Merger Consideration for all Tax purposes, to the maximum extent permitted by Applicable Law.

ARTICLE VIII
GENERAL PROVISIONS

8.1 Survival of Representations, Warranties and Covenants. If the Merger is consummated, the representations and warranties of the Company contained herein, in the Company Disclosure Schedule (including any exhibit or schedule to the Company Disclosure Schedule), and in the other certificates contemplated by this Agreement shall survive the Closing and remain in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the parties hereto, until the date that is 18 months following the Closing Date; provided that the Fundamental Representations will remain operative and in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the parties hereto, until the date that is two months following the expiration of the applicable statute of limitations (if later than the expiration of 18 months following the Closing Date) for claims against the Converting Holders that seek recovery of Indemnifiable Damages arising out of or resulting from an inaccuracy or breach of such representations or warranties; provided, further, that no right to indemnification pursuant to Article VII in respect of any claim that is set forth in an Claim Certificate delivered to the Shareholders' Agent prior to the expiration of the Escrow Period shall be affected by the expiration of such representations and warranties; and provided, further, that such expiration shall not affect the rights of any Indemnified Person under Article VII or otherwise to seek recovery of Indemnifiable Damages arising out of, resulting from or in connection with any fraud or intentional misrepresentation by or on behalf of the Company until the expiration of the applicable statute of limitations. If the Merger is consummated, the representations and warranties of Parent contained herein and in the other certificates contemplated by this Agreement shall expire and be of no further force or effect as of the Closing. If the Merger is consummated, all covenants, agreements and obligations of the parties hereto shall expire and be of no further force or effect as of the Closing, except to the extent such covenants, agreements and obligations provide that they are to be performed after the Closing; provided that no right to indemnification pursuant to Article VII in respect of any claim based upon any breach of a covenant, agreement or obligation shall be affected by the expiration of such covenant, agreement or obligation.

8.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via e-mail to the parties hereto at the following address (or at such other address for a party as shall be specified by like notice):

(i) if to Parent or Merger Sub, to:

Shutterfly, Inc.
2800 Bridge Parkway, Suite 101
Redwood City, CA 94065
Attention: Charlotte Falla, Vice President Legal and General Counsel
Telephone No.: (650) 610-3555
e-mails: cfalla@shutterfly.com and legal@shutterfly.com

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

Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Attention: David Michaels
Telephone No.: (650) 988-8500
e-mail: dmichaels@fenwick.com

(ii) if to the Company, to:

MyPublisher, Inc.
845 Third Avenue
New York, NY 10022
Attention: Carl Navarre, Jr.
Telephone No.: (212) 879-6313
e-mail: carlnavarre@icloud.com

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

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attention: Scott F. Smith
Telephone No.: (212) 841-1056
e-mail: ssmith@cov.com

(iii) If to the Shareholders' Agent, to:

Carl Navarre, Jr.
520 East 86th Street
New York, NY 10028
Telephone No.: (212) 879-6313
e-mail: carlnavarre@icloud.com

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

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attention: Scott F. Smith
Telephone No.: (212) 841-1056
e-mail: ssmith@cov.com

Any notice given as specified in this Section 8.2 (i) if delivered personally or sent by facsimile transmission shall conclusively deemed to have been given or served at the time of dispatch if sent or delivered on a Business Day or, if not sent or delivered on a Business Day, on the next following Business Day and (ii) if sent by commercial delivery service or mailed by registered or certified mail (return receipt requested) shall conclusively be deemed to have been received on the third Business Day after the post of the same.

8.3 Interpretation. When a reference is made herein to Articles, Sections, Subsections or Exhibits, such reference shall be to an Article, Section or Subsection of, or an Exhibit to this Agreement unless otherwise indicated. The headings contained herein 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," "delivered to," and phrases of similar import when used herein, unless the context otherwise requires, shall mean that a 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 or delivered. Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender, (ii) words using the singular or plural form also include the plural or singular form, respectively, (iii) the terms "hereof," "herein," "hereunder" and derivative or similar words refer to this entire Agreement and (iv) in comparing any two numbers, the phrases "exceeds" or "is greater than" means that (A) if both numbers are positive, the first number has a higher absolute value than the second number, (B) if both numbers are negative, the first number has a lower absolute value than the second number or (C) the first number is positive and the second number is negative, and vice versa with respect to the phrase "is less than." The symbol "$" refers to United States Dollars. The word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends and such phrase shall not mean simply "if." References to a Person are also to its permitted successors and assigns. All references to "days" shall be to calendar days unless otherwise indicated as a "Business Day."

8.4 Amendment. Subject to Applicable Law, the parties hereto may amend this Agreement by authorized action at any time pursuant to an instrument in writing signed on behalf of each of the parties hereto; provided that after the Company Shareholder Approval is obtained, no amendment shall be made to this Agreement that by Applicable Law requires further approval by the Company Shareholders without such further approval. To the extent permitted by Applicable Law, Parent and the Shareholders' Agent may cause this Agreement to be amended at any time after the Closing by execution of an instrument in writing signed on behalf of Parent and the Shareholders' Agent.

8.5 Extension; Waiver. At any time at or prior to the Closing, 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 parties hereto owed 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 covenants, agreements, obligations or conditions for the benefit of such party contained herein. At any time after the Closing, Parent and the Shareholders' Agent may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other owed to such party, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the covenants, agreements, obligations or conditions for the benefit of such party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing that is (x) prior to the Closing with respect to the Company and/or the Company Securityholders, signed by the Company, (y) after the Closing with respect to the Converting Holders and/or the Shareholders' Agent, signed by the Shareholders' Agent and (z) with respect to Parent and/or Merger Sub, signed by Parent. Without limiting the generality or effect of the preceding sentence, no failure to exercise or 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 herein.

8.6 Counterparts; Electronic Delivery. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood that all parties hereto need not sign the same counterpart. The delivery by facsimile or by electronic delivery in PDF format of this Agreement with all executed signature pages

(in counterparts or otherwise) shall be sufficient to bind the parties hereto to the terms and conditions set forth herein. All of the counterparts will together constitute one and the same instrument and each counterpart will constitute an original of this Agreement.

8.7 Entire Agreement; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including all the exhibits attached hereto, the Schedules, including the Company Disclosure Schedule, (a) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof, except for the Confidentiality Agreement, which shall continue in full force and effect, and shall survive any termination of this Agreement, in accordance with its terms and (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 VII is intended to benefit the Indemnified Persons and Section 4.12 is intended to benefit the Company Indemnified Persons). Nothing in this Agreement shall constitute an amendment to any Employee Plan and no Employee Plan shall be amended absent a separate written amendment that complies with such Employee Plan's amendment procedures.

8.8 Assignment. Neither this Agreement nor any of the rights and obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void, except that Parent and/or Merger Sub may assign its rights and delegate its obligations under this Agreement to any direct or indirect wholly owned subsidiary of Parent without the prior consent of any other party hereto; provided that notwithstanding any such assignment, Parent and/or Merger Sub, as applicable, shall remain liable for all of its obligations under this Agreement. 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.

8.9 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 efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

8.10 Remedies Cumulative; Specific Performance. The parties hereto agree that irreparable damage would occur and that the parties hereto would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the state courts of New York located in New York County, and the United States District Court for the Southern District of New York, this being in addition to any other remedy to which they are entitled at law or in equity and as further set forth in this Section 8.10.

8.11 Submission to Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

(a) 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 Borough of Manhattan, City of New York, State of New York, in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to herein, and in respect of the Transactions, and hereby waive, and agree not to assert, as a defense in any

action, suit or proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or 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 hereto 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 8.2 or in such other manner as may be permitted by Applicable Law, shall be valid and sufficient service thereof. With respect to any particular action, suit or proceeding, venue shall lie solely in the County of New York, New York. A party hereto 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 8.11. The appointment of an arbitrator does not preclude a party hereto from seeking prejudgment remedies and emergency relief from a court of competent jurisdiction.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED OR THE ACTIONS OF THE SHAREHOLDERS, PARENT, MERGER SUB, THE COMPANY OR THE SHAREHOLDERS' AGENT IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

8.12 Governing Law. This Agreement, all acts and transactions pursuant hereto and all obligations of the parties hereto 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 that would refer a matter to a different jurisdiction.

8.13 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 Applicable Law or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

8.14 Company Disclosure Schedule. The parties hereto agree that the Company Disclosure Schedule is not intended to constitute, and shall not be construed as constituting, representations and warranties of the Company except to the extent expressly provided in this Agreement or in the Company Disclosure Schedule. Parent and Merger Sub acknowledge that (i) the Company Disclosure Schedule may include items or information that the Company is not required to disclose under this Agreement, (ii) disclosure of such items or information shall not affect, directly or indirectly, the interpretation of this Agreement or the scope of the disclosure obligation of the Company under this Agreement and (iii) inclusion of information in the Company Disclosure Schedule shall not be construed as an admission that such information is material to the Company. Similarly, in such matters where a representation or warranty is given or other information is provided, the disclosure of any matter in the Company Disclosure Schedule shall not imply that any other undisclosed matter having a greater value or other significance is material.

8.15 Waiver of Conflicts Regarding Representation; Non-Assertion of Attorney-Client Privilege.

(a) Parent and Merger Sub each hereby waives and will not assert, and each agrees to cause the Surviving Corporation to waive and not to assert, any conflict of interest arising out of or

relating to the representation, after the Effective Time (the "Post-Closing Representation"), of the Shareholders' Representative, any Company Securityholder or other officer, employee or director of the Company (any such Person, a "Designated Person") in any matter involving this Agreement, the Transactions or any other agreements contemplated hereby (including any litigation, arbitration, mediation or other proceeding), by Covington & Burling LLP (collectively, the "Current Representation").

(b) Parent and Merger Sub will not assert, and each agrees to cause the Surviving Corporation not to assert, any attorney-client privilege with respect to any communication between any legal counsel and any Designated Person occurring during the Current Representation in connection with any Post-Closing Representation in connection with a dispute with Parent, and following the Closing, with the Surviving Corporation, it being the intention of the parties hereto that all such rights to such attorney-client privilege and to control such attorney-client privilege shall be retained by such Designated Person; provided, that nothing in this Section 8.14 shall be construed as a waiver of any attorney-client privilege.

[SIGNATURE PAGE NEXT]

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Shareholders' Agent have caused this Agreement and Plan of Merger to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Shareholders' Agent, personally solely in his capacity as Shareholders' Agent), all as of the date first written above.

SHUTTERFLY, INC.

By: _____
Name: Jeff Housenbold
Title: Chief Executive Officer

GUINNESS EXPRESSIONS ACQUISITION SUB, INC.

By: _____
Name: Brian Regan
Title: President

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Shareholders' Agent have caused this Agreement and Plan of Merger to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Shareholders' Agent, personally solely in his capacity as Shareholders' Agent), all as of the date first written above.

MYPUBLISHER, INC.

By: _____

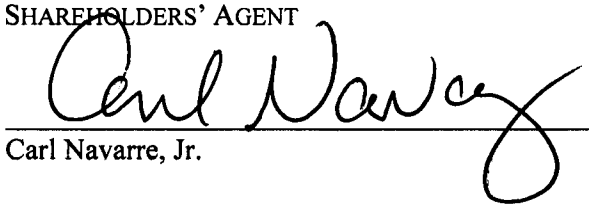
Name: Carl Navarre, Jr.

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Shareholders' Agent have caused this Agreement and Plan of Merger to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Shareholders' Agent, personally solely in his capacity as Shareholders' Agent), all as of the date first written above.

SHAREHOLDERS' AGENT



Carl Navarre, Jr.

EXHIBIT A

DEFINITIONS

As used herein, the following terms shall have the meanings indicated below. Unless indicated otherwise, all mathematical calculations contemplated by this Agreement shall be rounded to the tenth decimal place.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, including any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person, in each case as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by Contract or otherwise.

"Aggregate Exercise Price" means the sum of the exercise prices of all In the Money Options that are included in the Fully-Diluted Company Common Stock.

"Applicable Law" means, with respect to any Person, any federal, state, foreign, local, municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, directive, license, permit, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity and any Orders applicable to such Person or such Person's Affiliates or to any of their respective assets, properties or businesses.

"Business" means the business of the Company (i) as currently conducted by the Company and (ii) as currently proposed to be conducted by the Company and with respect to which the Company has taken active measures to implement.

"Business Day" means a day (i) other than Saturday or Sunday and (ii) on which commercial banks are open for business in San Francisco, California and New York, New York.

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

"Common Per Share Merger Consideration" means (i) the Merger Consideration divided by (ii) the Fully-Diluted Company Common Stock.

"Company Cash" means, as of any time, the sum of (i) all cash and cash equivalents (including highly liquid investments that can be converted into cash, or that have a maturity that ends, in either case, within 90-days following such time) held in the bank or brokerage accounts of the Company, including the amounts of any received checks, drafts and wires issued prior to such time, whether or not such checks, drafts or wires have cleared as of such time plus (ii) any cash used by the Company to pay to each of the employees of the Company an amount equal to such employee's accrued but unused vacation or paid time off as of the Closing in the amounts not to exceed the amounts set forth on Schedule 4.9(d) of the Company Disclosure Schedule with respect to such employee.

"Company Closing Financial Certificate" means a certificate executed by the Chief Operating Officer of the Company dated as of the Closing Date, certifying the Company's good faith estimate of the following amounts: (i) Company Net Cash (including (A) an itemized list of Company Cash with a description thereof and (B) an itemized list of each Company Debt with a description of the nature of such Company Debt and the Person to whom such Company Debt is owed), (ii) Company Net Working Capital (including (A) the Company's balance sheet as of the Closing prepared on a consistent basis with the Interim Financial Statements, (B) an itemized list of each element of the Company's consolidated current assets included in the calculation of Company Net Working Capital and (C) an itemized list of each element of the Company's consolidated total current liabilities included in the calculation of Company Net Working Capital) and (iii) incurred but unpaid Transaction Expenses.

"Company Common Stock" means the common stock, par value of $0.00005 per share, of the Company.

"Company Debt" means all indebtedness of the Company for borrowed money, whether current or funded, short- or long-term, including any accrued and unpaid interest, fees, premiums and prepayment or termination penalties; provided that Company Debt shall not include any Liabilities for incurred but unpaid Transaction Expenses.

"Company IP Rights" means (A) any and all Intellectual Property used in the conduct of the Business and (B) any and all other Intellectual Property owned by the Company.

"Company Net Cash" means (i) Company Cash as of the Closing less (ii) Company Debt as of the Closing.

"Company Net Working Capital" means (i) the Company's total current assets as of the Closing (determined on a basis consistent with the accounting principles applied in Schedule A hereto) less (ii) the Company's total current liabilities as of the Closing (determined on a basis consistent with the accounting principles applied in Schedule A hereto); provided that, (A) the Company's current assets shall (regardless of whether they would be treated as a current asset in the Financial Statements) exclude (x) Company Cash to the extent taken into account in the calculation of Company Net Cash and (y) deferred Tax assets and (B) the Company's current liabilities shall (regardless of whether they would be treated as a current liability in the Financial Statements) (I) include (w) accounts payable and other accrued expenses and any guarantees of the Company of any Liability of any third party, (x) Company Debt to the extent not taken into account in the calculation of Company Net Cash and (y) Liabilities for Pre-Closing Taxes (including any payroll, withholding or other Taxes arising out of or resulting from any payment required pursuant to this Agreement or the Transactions), whether or not such Liabilities would be then due and payable, and (II) exclude (w) amounts owing under any capitalized or synthetic leases, (x) deferred revenue, (y) deferred rent and (z) Liabilities for incurred but unpaid Transaction Expenses. For illustration, a sample calculation of Company Net Working Capital (assuming the Closing occurred on the Agreement Date) is set forth on Schedule A hereto.

"Company Net Working Capital Shortfall" means the amount, if any, by which the Company Net Working Capital Threshold exceeds Company Net Working Capital as set forth in the Company Closing Financial Certificate.

"Company Net Working Capital Threshold" means negative $1,050,000.

"Company Option Plan" means, collectively, each stock option plan, program or arrangement of the Company.

"Company Optionholders" means (i) with respect to any time before the Effective Time, collectively, the holders of record of Company Options outstanding as of such time and (ii) with respect to any time at or after the Effective Time, collectively, the holders of record of Company Options outstanding as of immediately prior to the Effective Time.

"Company Options" means options to purchase shares of Company Common Stock.

"Company-Owned IP Rights" means Company IP Rights that are owned or are purportedly owned by the Company.

"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 and all products or services currently under development by the Company.

"Company Registered Intellectual Property" means, as of the Agreement Date, all United States, international and foreign, (A) patents and pending patent applications (including provisional applications), (B) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks, (C) registered Internet domain names, and (D) registered copyrights and applications for copyright registration, in each case ((A) through (D)) that are currently or have been owned, registered or filed by the Company.

"Company Securityholders" means the Company Shareholders and Company Optionholders, collectively.

"Company Shareholders" means (i) with respect to any time before the Effective Time, collectively, the holders of record of shares of Company Common Stock outstanding as of such time and (ii) with respect to any time at or after the Effective Time, collectively, the holders of record of shares of Company Common Stock outstanding as of immediately prior to the Effective Time.

"Company Source Code" means any software source code that is included in Company-Owned IP Rights.

"Contract" means any written or oral legally binding contract, agreement, instrument, commitment or undertaking of any nature (including leases, subleases, licenses, mortgages, notes, guarantees, sublicenses, subcontracts, letters of intent and purchase orders) as of the Agreement Date or as may hereafter be in effect, including all amendments, supplements, exhibits and schedules thereto.

"Converting Holders" means (i) Company Shareholders (other than those Company Shareholders all of whose shares of Company Common Stock constitute Dissenting Shares), (ii) Company Optionholders holding In the Money Options, in each case as of immediately prior to the Effective Time.

"Dissenting Shares" means any shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and that are held by shareholders who have neither voted in favor of the Merger nor consented thereto in writing and who shall have properly demanded appraisal for such shares in accordance with the NYBCL.

"Environmental, Health and Safety Requirements" means all Applicable Law concerning or relating to worker/occupational health and safety, or pollution or protection of the environment, including those relating to the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, transfer, storage, disposal, distribution, importing, labeling, testing,

processing, discharge, release, threatened release, control or other action or failure to act involving cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation, each as amended and as now in effect.

"Equity Interests" means, with respect to any Person, any capital stock of, or other ownership, membership, partnership, joint venture or equity interest in, such Person or any indebtedness, securities, options, warrants, call, subscription or other rights of, or granted by, such Person or any of its Affiliates that are convertible into, or are exercisable or exchangeable for, or giving any Person any right to acquire any such capital stock or other ownership, partnership, joint venture or equity interest, in all cases, whether vested or unvested.

"Escrow Amount" means an amount in cash equal to $5,793,000.

"Fully-Diluted Company Common Stock" means the sum, without duplication, of (i) the aggregate number of shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and (ii) the aggregate number of shares of Company Common Stock that are issuable upon the exercise of Company Options or other direct or indirect rights to acquire shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time; provided that shares of Company Common Stock that are issuable upon the exercise of Company Options that are not In the Money Options shall not be included in the Fully-Diluted Company Common Stock.

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

"Governmental 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 (including any governmental or political division, department, agency, commission, instrumentality, official, organization, unit, body or entity and any court or other tribunal).

"Highest In the Money Exercise Price" means the highest per share exercise price at which the Common Per Share Merger Consideration would exceed such highest per share exercise price assuming that (i) all Company Options outstanding as of immediately prior to the Effective Time (A) with a per share exercise price equal to or less than such highest per share exercise price are included in the Fully-Diluted Company Common Stock and (B) with a per share exercise price greater than such highest per share exercise price are excluded from the Fully-Diluted Company Common Stock and (ii) the sum of the exercise prices of all Company Options (A) with a per share exercise price equal to or less than such highest per share exercise price were included in the Aggregate Exercise Price and (B) with a per share exercise price greater than such highest per share exercise price were excluded from the Aggregate Exercise Price.

"In the Money Options" means the unexercised, validly issued, unexpired and vested Company Options or portions of Company Options that are outstanding immediately prior to the Effective Time and that have an exercise price that is less than the Highest In the Money Exercise Price.

"Indemnifiable Net Cash Shortfall" means any item of Company Cash or Company Debt

as of the Closing that has not been taken into account in the calculation of the Merger Consideration and would have resulted in a reduction in the Merger Consideration had such item properly been taken into account in such calculation.

"Indemnifiable Transaction Expenses" means any Liabilities for Transaction Expenses not set forth on the Company Closing Financial Certificate.

"Intellectual Property" means all intellectual property and all rights associated therewith, throughout the world, including all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, all inventions (whether patentable or not), improvements, trade secrets, proprietary information, know how, technology, technical data, proprietary processes and formulae, algorithms, specifications, customer lists and supplier lists, all industrial designs and any registrations and applications therefor, all 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, Internet domain name registrations, Internet and World Wide Web URLs or addresses, all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto, all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, all computer software, including all source code, object code, firmware, development tools, files, records and data, all schematics, netlists, test methodologies, test vectors, emulation and simulation tools and reports, hardware development tools, and all rights in prototypes, breadboards and other devices, all databases and data collections and all rights therein.

"intentional misrepresentation" means that the Company made a representation or warranty contained in this Agreement (as modified by the Company Disclosure Letter), or any exhibit or schedule to, or certificate required to be delivered pursuant to, this Agreement with the knowledge (without regard to the proviso in the definition of "knowledge") that it was false as of the Agreement Date.

"Key Employees" means the employees of the Company set forth on Schedule B hereto.

"knowledge of the Company" or "to the Company's 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 of the individuals listed in Schedule 1.1 of the Company Disclosure Schedule; provided that such individuals will be deemed to have actual knowledge of a particular fact, circumstance, event or other matter if (A) such fact, circumstance, event or other matter is reflected in one or more documents (whether written or electronic) contained in books and records of the Company that would reasonably be expected to be reviewed by an individual with the duties and responsibilities of such individual in the ordinary course of performance of such responsibilities or (B) such knowledge could be obtained from reasonable inquiry of the employees of the Company charged with primary administrative or operational responsibility for the applicable matter.

"Liabilities" means all debts, liabilities, commitments and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, liquidated or unliquidated, asserted or unasserted, known or unknown, whenever or however arising, including those arising under Applicable Law or any Proceeding or Order of a Governmental Entity and those arising under any Contract, regardless of whether such debt, liability, commitment or obligation would be required to be reflected on a balance sheet prepared in accordance with GAAP or disclosed in the notes thereto.

"Lien" means, with respect to any asset, any mortgage, easement, encroachment, equitable interest, deed of trust, lien (statutory or other), pledge, charge, security interest, title retention device, conditional sale or other security arrangement, collateral assignment, right of first refusal or other encumbrance of any kind in respect of such asset.

"Material Adverse Effect" with respect to any Person means any change, event, violation, inaccuracy, circumstance or effect (each, an "Effect") that, individually or taken together with all other Effects, (i) is, or is reasonably likely to be, materially adverse in relation to the condition (financial or otherwise), properties, employees, assets (including intangible assets), Liabilities, business, operations or results of operations of the Company, except in each case to the extent that any such Effect results from: (1) changes in general economic conditions (provided that such changes do not adversely affect the Company disproportionately as compared to its competitors); (2) changes affecting the industry generally in which the Company operates (provided that such changes do not adversely affect the Company disproportionately as compared to its competitors); (3) any acts of terrorism, military action or war; (4) actions by or on behalf of the Company taken at the written direction of Parent or taken pursuant to the express terms of this Agreement; (5) the public announcement or pendency of the Merger or the other Transactions, including any impact thereof on relationships with customers, suppliers, distributors, competitors, partners or employees or (6) changes in applicable Laws or GAAP (provided that such changes do not adversely affect the Company disproportionately as compared to its competitors) or (ii) prevents or materially delays, or is reasonably likely to prevent or materially delay, consummation of the Merger or the other Transactions.

"Merger Consideration" means $38,620,000 in cash plus (i) the Aggregate Exercise Price, plus (ii) if Company Net Cash is positive, an amount in cash equal to the amount by which Company Cash exceeds Company Debt as of the Closing, less (iii) the sum of (A) if Company Net Cash is negative, an amount in cash equal to the amount by which Company Debt exceeds Company Cash as of the Closing and (B) an amount in cash equal to incurred but unpaid Transaction Expenses as of the Closing.

"Order" means any judgment, writ, decree, stipulation, determination, decision, award, rule, preliminary or permanent injunction, temporary restraining order or other order of a Governmental Entity.

"Ordinary Course Agreements" means non-exclusive (i) licenses granted to end-users or customers in the ordinary course of business on the Company's standard form(s) of agreement (including the Company's website terms of service and end user license agreement for downloadable software), copies of which have been provided to Parent, (ii) licenses granted to third parties providing services to the Company in the ordinary course of business, including licenses granted to digital media and marketing service providers, developers, and hosting providers in the ordinary course of business, and (iii) licenses granted to third parties in the ordinary course of business in connection with co-branding or other promotional activities.

"Permitted Liens" means: (i) statutory liens for Taxes that are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings, (ii) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (iii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by Applicable Law, (iv) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens, (v) liens in favor of customs and revenue authorities arising as a matter of Applicable Law to secure payments of customs duties in connection with the importation of goods, (vi) non-exclusive object code licenses of software by the Company in the ordinary course of business consistent with past practice on its standard

unmodified form of customer agreement (a copy of which has been provided to Parent), (vii) easements, rights of way, reservations, restrictions and other similar encumbrances incurred in the ordinary course of business consistent with past practice or existing on property and not interfering with the ordinary conduct of the Business and (viii) any interest or title of a lessor of assets that is being leased pursuant to any capital lease or synthetic lease or any lease (other than a synthetic lease) that is accounted for as an operating lease.

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

"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 or is otherwise considered personally identifiable information or personal data under Applicable Law.

"Pre-Closing Taxes" means any Taxes of the Company for a Taxable period ending on or prior to the Closing Date. In the case of any Taxes of the Company that are imposed on a periodic basis and that are payable for a Taxable period that includes (but does not end on) the Closing Date, such Taxes shall (i) in the case of property, *ad valorem* or other Taxes that accrue based upon the passage of time, be deemed to be Pre-Closing Taxes in an amount equal to the amount of such Taxes for the entire Taxable period multiplied by a fraction, the numerator of which is the number of days in the Taxable period through and including the Closing Date and the denominator of which is the number of days in the entire Taxable period, and (ii) in the case of any other Taxes, be deemed to be Pre-Closing Taxes in an amount equal to the amount of Taxes that would be payable if the relevant Taxable period ended on the Closing Date. Any credits relating to a Taxable period that includes (but does not end on) the Closing Date shall be taken into account as though the relevant Taxable period ended on the Closing Date.

"Proceeding" means any private or governmental action, inquiry, claim, proceeding, suit, hearing, litigation, audit or investigation, in each case whether civil, criminal, administrative, judicial or investigative, or any appeal therefrom.

"Pro Rata Share" means, with respect to a particular Converting Holder, a fraction, the numerator of which is the aggregate amount of cash that such Converting Holder is entitled to be paid pursuant to Section 1.3(a) (which, for the avoidance of doubt, excludes any payments in respect of Dissenting Shares) and the denominator of which is the aggregate amount of cash that all Converting Holders are entitled to be paid pursuant to Section 1.3(a).

"Representatives" means, with respect to a Person, such Person's officers, directors, Affiliates, shareholders or employees, or any investment banker, attorney, accountant, auditor or other advisor or representative retained by any of them.

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

"Shareholders' Agent Expense Amount" means $250,000.

"Subsidiary" means any corporation, partnership, limited liability company or other Person of which the Company, either alone or together with one or more Subsidiaries or by one or more other Subsidiaries (i) directly or indirectly owns or purports to own, beneficially or of record securities or other interests representing more than 50% of the outstanding equity, voting power, or financial interests

of such Person or (ii) 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.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") means (i) any net income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, fringe benefit, 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"), (ii) any Liability for the payment of any amounts of the type described in clause (i) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any Taxable period and (iii) any Liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person.

"Tax 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) filed or required to be filed with respect to Taxes.

"Third-Party Intellectual Property Rights" means any and all Intellectual Property owned by a third party.

"Transaction Expenses" means all third-party fees, costs, expenses, payments and expenditures incurred by the Company in connection with the Merger, this Agreement and the Transactions, whether or not incurred, billed or accrued, including (i) any fees, costs expenses, payments and expenditures of legal counsel and accountants, (ii) any fees, costs, expenses, payments and expenditures payable to brokers, finders, financial advisors, investment bankers or similar Persons, (iii) any such fees, costs, expenses, payments and expenditures incurred by Company Securityholders paid for or to be paid for by the Company, (iv) all bonuses or severance payments paid or payable by the Company to its respective directors, employees and/or consultants in connection with the Merger, whether paid or payable at or following the Closing and any payroll, withholding or other Taxes arising out of or resulting from any of the foregoing and (v) any amounts incurred by the Company to purchase the D&O Tail Insurance. In addition, the Transaction Expenses shall include 50% of the fees, costs and expenses of the Paying Agent and the Escrow Agent.

Other capitalized terms used herein and not defined in this Exhibit A shall have the meanings assigned to such terms in the following Sections:

Exhibit B-2

Consenting Shareholders

Carl Navarre, Jr.
Carlos Navarre 2006 Trust
Carlos Navarre Trust U/A 09/07/05
William Menzie Navarre 2006 Trust
William Navarre Trust u/a dated 8/28/07
Maude McCown Navarre 2006 Trust
Maude Navarre 2012 Trust
Mary N. Moore
Louise N. Frye
Laura N. O'Callaghan
A. Alexander Taylor II IRA
Robert I. Israel
Norborne P. Cole, Jr.
Nancy S. DeMoss
W. Thorpe McKenzie
John C. Dunagan
Natalie Dunagan
Sarah Dunagan
J. Christopher Dunagan
William Avery
Michael Gleason
AB Novestra
PGM Partners, LLC
William N. Bailey
Bailey Family 2006 Trust
Walter Theodore Moore
Tom moore IV
Sarah Temple Moore
Nebris Corporation
North Oakland LLC
Moussefixe, L.P.
Charles Heilbronn
Randal Barron

Schedule A

Sample Calculation of Net Working Capital (as of March 31, 2013)

Current Assets	
Receivables	$671,265
Inventory	774,793
Prepaid Expenses	209,120
Other Current Assets	500
Total Current Assets:	**$1,655,679**
Current Liabilities	
Payables	$1,090,622
Accrued Expenses	1,317,659
Total Current Liabilities:	**$2,408,281**
Net Working Capital:	**($752,603)**

Schedule B
Key Employees

1. Dwight Blaha
2. Jaimee Michaud
3. Angel Huertas
4. Juiena Rahman
5. Jude Niles
6. Roger Florkowski