

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM321254

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	MERGER		
EFFECTIVE DATE:	08/19/2013		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Avecra, Inc.		10/27/2014	INC. ASSOCIATION Corp. DELAWARE
RECEIVING PARTY DATA			
Name:	Abila, Inc.		
Street Address:	10800 Pecan Park Boulevard, Ste. 400		
City:	Austin		
State/Country:	TEXAS		
Postal Code:	78750 Corp.		
Entity Type:	INC. ASSOCIATION DELAWARE		
PROPERTY NUMBERS Total: 7			
Property Type	Number	Word Mark	
Registration Number:	2904630	AVECTRA	
Registration Number:	3907776	AVECTRA	
Registration Number:	4250647	A-SCORE	
Registration Number:	4323825	ELEVATE YOUR MISSION	
Registration Number:	4148957	MEMBERFUSE	
Registration Number:	3907775	NETFORUM	
Registration Number:	2917174	NETFORUM	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	512-338-4601		
Email:	gtrussell@russell-law.com		
Correspondent Name:	Taylor Russell & Russell, P.C.		
Address Line 1:	10601 FM 2222, Ste. R-12		
Address Line 4:	Austin, TEXAS 78730		
ATTORNEY DOCKET NUMBER:	801379,80,81,82,84,85,86		
NAME OF SUBMITTER:	Gail Taylor Russell		

OP \$190.00 2904630

SIGNATURE:	/Gail Taylor Russell/
DATE SIGNED:	10/27/2014
<p>Total Attachments: 84</p> <p>source=Executed_Avecra_Assignment#page1.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page1.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page2.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page3.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page4.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page5.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page6.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page7.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page8.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page9.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page10.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page11.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page12.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page13.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page14.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page15.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page16.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page17.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page18.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page19.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page20.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page21.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page22.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page23.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page24.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page25.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page26.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page27.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page28.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page29.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page30.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page31.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page32.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page33.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page34.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page35.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page36.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page37.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page38.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page39.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page40.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page41.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page42.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page43.tif</p> <p>source=Merger_Agreement_Avecra_to_Abila#page44.tif</p>	

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Trademark Assignment to Abila, Inc.

Effective Date: August 19, 2013

For value received, Avector, Inc., a Delaware corporation, with a business address of 7901 Jones Branch Drive, Suite 500, McLean, VA 22102 (collectively "Assignor"), hereby irrevocably and exclusively grants, assigns, transfers, and conveys all right, title, interest, and ownership, including without limitation common law rights, in and to the following trademarks and service marks:

2,904,630 – AVECTRA – class 9 only
3,907,776 – AVECTRA – class 42 only
4,250,647 – A-SCORE
4,323,825 – ELEVATE YOUR MISSION
4,148,957 – MEMBERFUSE
3,907,775 – NETFORUM – class 42 only
2,917,174 – NETFORUM – class 9 only

throughout the United States, Canada, Europe and the rest of the world, along with the right to sue and recover damages for past infringement, together with that part of the goodwill of the business connected with the use of and symbolized by the marks, to Abila, Inc., a Delaware corporation having a business address of 10800 Pecan Park Boulevard, Suite 400, Austin, TX 78750 (hereinafter "Assignee"). Assignee is a successor to the portion of Assignor's business to which the trademarks and service marks pertain.

To be binding on the heirs, assigns, representatives and successors of the undersigned and extend to the successors, assigns and nominees of the Assignee.

By: Avector, Inc.

Signature

Date

Name:

Title:

TRADEMARK

REEL: 005389 FRAME: 0272

AGREEMENT AND PLAN OF MERGER

by and among

ABILA, INC.,
a Delaware corporation,

ABILA MERGER SUB CORP.,
a Delaware corporation,

AVECTRA, INC.,
a Delaware corporation, and

AVECTRA SHAREHOLDER REP LLC,
a Delaware limited liability company,
in its capacity as
the Stockholders' Representative

Dated as of August 19, 2013

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Exhibits

Exhibit A	Capitalized Terms
Exhibit B	Joinder
Exhibit C	Certificate of Merger
Exhibit D	Certificate of Incorporation of the Surviving Corporation
Exhibit E	Bylaws of the Surviving Corporation
Exhibit F	Directors and Officers of the Surviving Corporation

Exhibit G	Stockholder Written Consent
Exhibit H	Letter of Transmittal
Exhibit I	Deferred Revenue
Exhibit J	Escrow Agreement
Exhibit K	Net Working Capital

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “*Agreement*”) is made and entered into as of August 19, 2013, by and among: (a) **ABILA, INC.**, a Delaware corporation (“*Parent*”); (b) **ABILA MERGER SUB CORP.**, a Delaware corporation and a wholly owned subsidiary of Parent (“*Merger Sub*”); (c) **AVECTRA, INC.**, a Delaware corporation (the “*Company*”); (d) **AVECTRA SHAREHOLDER REP LLC**, a Delaware limited liability company, in its capacity as the representative of the Effective Time Holders (as defined below) pursuant to Section 8.1 hereof (the “*Stockholders’ Representative*”). Certain other capitalized terms used in this Agreement are defined in **Exhibit A**.

RECITALS

A. Parent, Merger Sub and the Company intend to effect a merger of Merger Sub into the Company in accordance with this Agreement and the DGCL (the “*Merger*”). Upon consummation of the Merger, Merger Sub will cease to exist, and the Company will become a wholly owned subsidiary of Parent.

B. This Agreement has been approved by the respective boards of directors of Parent, Merger Sub and the Company.

C. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, Effective Time Holders holding shares of Company Capital Stock comprising at least ninety-five percent (95%) of the Company Capital Stock (or such other amount acceptable to Parent) are executing and delivering a joinder and indemnification agreement, pursuant to which such holders will agree to be bound by the provisions of this Agreement, including the provisions set forth in SECTION 6 in the form of **Exhibit B** (each, a “*Joinder*” and collectively, the “*Joinders*”).

D. Pursuant to the Merger (and on the terms and subject to the conditions set forth in this Agreement), among other things, all of the issued and outstanding shares of Company Capital Stock and all outstanding options, warrants and other rights to receive shares of the Company Capital Stock shall be cancelled and, as and to the extent set forth in this Agreement, converted into the right to receive cash as provided for herein.

AGREEMENT

In consideration of the covenants, promises and representations set forth herein, and for good and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

SECTION 1. DESCRIPTION OF TRANSACTION

1.1 Merger of Merger Sub into the Company. Upon the terms and subject to the conditions set forth in this Agreement, 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 (the “*Surviving Corporation*”).

1.2 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL.

1.3 Closing. The closing of the Merger (the “*Closing*”) shall take place at 10:00 a.m., on the date hereof, subject to the delivery of Stockholder Consents duly executed by Effective Time Holders holding a number of shares of Company Capital Stock comprising at least ninety-five percent (95%) of the Company Capital Stock (or such other amount acceptable to Parent but, for the avoidance of doubt, in any event, which constitutes a number of shares of Company Capital Stock sufficient for obtaining the requisite company vote to approve the Merger (determined in accordance with the Company Charter and the DGCL)) (the “*Closing Date*”), at the offices Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654, unless another date, place or time is agreed to in writing by the parties hereto.

1.4 Effective Time. Subject to the provisions of this Agreement, a certificate of merger 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 delivered to the Secretary of State of the State of Delaware for filing. The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware (the “*Effective Time*”).

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

(a) the certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to **Exhibit D**

(b) the bylaws of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to the bylaws of Merger Sub as in effect immediately prior to the Effective Time and as set forth on **Exhibit E**; and

(c) the directors and officers of the Surviving Corporation immediately after the Effective Time shall be the individuals identified on **Exhibit F**.

1.6 Merger Consideration.

(a) **Calculation of the Merger Consideration.** The “*Merger Consideration*” shall equal an aggregate amount in cash determined as follows:

(i) Thirty-Seven Million and 00/100 Dollars (\$37,000,000) (the “*Enterprise Value*”);

(ii) **minus**, on a dollar-for-dollar basis, the amount of the Company Debt;

(iii) **minus**, on a dollar-for-dollar basis, the amount of the Company Change in Control Payments;

(iv) **minus**, on a dollar-for-dollar basis, the amount of the Company Transaction Expenses;

(v) **minus**, on a dollar-for-dollar basis, the amount (if any) by which the Deferred Revenue exceeds the Deferred Revenue Target;

(vi) if the Net Working Capital exceeds the Net Working Capital Target, then **plus**, on a dollar-for-dollar basis, the amount by which the Net Working Capital is greater than the Net Working Capital Target;

(vii) if the Net Working Capital is less than the Net Working Capital Target, then **minus**, on a dollar-for-dollar basis, the amount by which the Net Working Capital is less than the Net Working Capital Target; and

(viii) **plus** on a dollar-for-dollar basis, the amount of Company Cash.

(b) **Merger Consideration; Adjustments, Etc.** The Merger Consideration shall be determined on an estimated basis at Closing pursuant to Section 1.10 below and then reconciled and adjusted after the Closing based on the Closing adjustment items set forth in Section 1.11 below. As used herein, the term “**Merger Consideration**” shall mean: (i) the Estimated Merger Consideration at the Closing (including for purposes of calculating the Closing payments under Section 1.10(b)) and at all times thereafter until the Final Merger Consideration is determined pursuant to Section 1.11; or (ii) the Final Merger Consideration, at such time as the Final Merger Consideration is finally determined pursuant to Section 1.11 and at all times thereafter.

1.7 Adjustment Escrow. Of the Estimated Merger Consideration otherwise payable at the Closing, \$500,000 (the “**Adjustment Escrow Amount**”) shall be deposited by Parent at the Closing as provided by Section 1.10(b)(iv), by wire transfer of immediately available funds, into escrow pursuant to the terms of the Escrow Agreement for the purpose of satisfying any obligations of the Effective Time Holders pursuant to Section 1.11. Each Effective Time Holder shall contribute (or shall be deemed to have contributed) to the Adjustment Escrow Amount in proportion to such Effective Time Holder’s Adjustment Pro Rata Share.

1.8 Indemnity Escrow. Of the Estimated Merger Consideration otherwise payable at the Closing, \$3,700,000 (the “**Indemnity Escrow Amount**”) shall be deposited by Parent at the Closing as provided by Section 1.10(b)(iv), by wire transfer of immediately available funds, into escrow pursuant to the terms of the Escrow Agreement for the purpose of satisfying obligations of the Effective Time Holders pursuant to SECTION 6. Each Effective Time Holder shall contribute (or shall be deemed to have contributed) to the Indemnity Escrow Amount in proportion to such Effective Time Holder’s Adjustment Pro Rata Share.

1.9 Reserve Amount. Of the Estimated Merger Consideration otherwise payable at the Closing, the Reserve Amount shall be deposited by Parent at the Closing as provided by Section 1.10(b)(v), by wire transfer of immediately available funds, into a bank account (the “*Reserve Account*”) established and controlled by the Stockholders’ Representative. Each Effective Time Holder shall contribute (or shall be deemed to have contributed) to the Reserve Amount in proportion to such Effective Time Holder’s Reserve Pro Rata Share. The Reserve Amount is to be used by the Stockholders’ Representative to pay the costs and expenses, if any, incurred by the Stockholders’ Representative in defending and/or resolving any indemnification claims brought by a Claiming Party under SECTION 6, and any other costs or expenses incurred by the Stockholders’ Representative in the good faith performance of its obligations as the Stockholders’ Representative. Amounts in the Reserve Account shall be disbursed by the Stockholders’ Representative in accordance with the terms of this Agreement. No interest or other earnings on amounts in the Reserve Account shall be received by contributors to the Reserve Account and any such interest or other earnings on amounts are irrevocably transferred and assigned to the Stockholders’ Representative. The Stockholders’ Representative shall have no responsibility or liability for any loss of principal of the Reserve Account other than as a result of its gross negligence or willful misconduct. The Stockholders’ Representative is not acting as a withholding agent or in any similar capacity in connection with the Reserve Account, and has no tax reporting obligations hereunder. For tax purposes, to the extent permitted by applicable Legal Requirements, the Reserve Amount shall be treated as having been received and voluntarily set aside by the contributors at the time of Closing. The Stockholders’ Representative shall disburse all amounts remaining in the Reserve Account to the Effective Time Holders in accordance with their Reserve Pro Rata Share, upon the later of (i) the date that is eighteen (18) months following the Closing Date and (ii) the date on which all indemnification claims against the Effective Time Holders are finally resolved. The Reserve Amount, to the extent not disbursed to the Effective Time Holders, will be deemed a reduction from the Merger Consideration otherwise payable to the Effective Time Holders.

1.10 Calculation and Payment of the Merger Consideration.

(a) **Estimated Statement.** At least two business days prior to the Closing Date, the Company shall prepare and deliver to Parent a reasonably detailed statement, in form and substance reasonably acceptable to Parent (the “*Estimated Statement*”) containing:

(i) (1) the Company’s good faith estimates of the Company Debt, Company Transaction Expenses, Company Change in Control Payments, Deferred Revenue, Net Working Capital and Company Cash and (2) the Company’s calculation of the Merger Consideration (based on the Company’s good faith estimates of the Company Debt, Company Transaction Expenses, Company Change in Control Payments, Deferred Revenue, Net Working Capital and Company Cash) pursuant to Section 1.6(a) (the “*Estimated Merger Consideration*”); and

(ii) the Payout Spreadsheet.

The Estimated Statement shall be based upon the Records of the Company and other information then available and the Company shall provide Parent and its Representatives reasonable access during normal business hours and upon reasonable notice to

the Records of the Company and such information used to prepare the Estimated Statement and Payout Spreadsheet and its personnel in order to allow Parent to verify the Estimated Statement and Payout Spreadsheet.

(b) **Payments at the Closing:**

(i) Promptly after the Effective Time, Parent or the Surviving Corporation shall pay (or cause to be paid) the Company Debt (other than (x) the deferred rent specified in clause (d) of the definition of Indebtedness and (y) Agreed Upon Debt specified in clause (m) of the definition of Indebtedness) by wire transfer of immediately available funds to each of the applicable lenders for which a Payoff Letter is received pursuant to Section 5.3(h);

(ii) Promptly after the Effective Time, Parent or the Surviving Corporation shall pay (or cause to be paid) the Company Transaction Expenses by wire transfer of immediately available funds to each of the applicable vendors for which a Final Invoice is received pursuant to Section 5.3(i);

(iii) Promptly after the Effective Time (after satisfaction of the applicable conditions to payment), Parent or the Surviving Corporation shall pay (or cause to be paid) the Company Change in Control Payments by wire transfer of immediately available funds, net of any applicable withholding Taxes and through the Surviving Corporation's payroll system;

(iv) Promptly after the Effective Time, Parent or the Surviving Corporation shall deposit (or cause to be deposited) the Adjustment Escrow Amount and the Indemnity Escrow Amount, by wire transfer of immediately available funds, into escrow pursuant to the terms of the Escrow Agreement;

(v) Promptly after the Effective Time, Parent or the Surviving Corporation shall deposit (or cause to be deposited) the Reserve Amount, by wire transfer of immediately available funds, into the Reserve Account; and

(vi) Promptly after the Effective Time, Parent or the Surviving Corporation shall pay (or cause to be paid), in each case, based on the Estimated Merger Consideration (less the Indemnity Escrow Amount, the Adjustment Escrow Amount and the Reserve Amount) and as set forth on the Payout Spreadsheet (the "**Closing Date Payees**");

(A) as and when contemplated by Section 1.15 below (and only upon receipt by the Company and Parent of the deliveries contemplated in such section), to each holder of Preferred Stock (other than Dissenting Shares) an amount in cash equal to the product of (1) the number of shares of Preferred Stock (other than Dissenting Shares) held by such holder of Preferred Stock immediately prior to the Effective Time and (2) the Per Share Preferred Stock Merger Consideration (calculated as of the Closing Date), as set forth on the Payout Spreadsheet, in each case by wire transfer of immediately available funds to the account(s) designated by such holder in such holder's Letter of Transmittal; and

(B) as and when contemplated by Section 1.15 below (and only upon receipt by the Company and Parent of the deliveries contemplated in such section), to each holder of Common Stock (other than Dissenting Shares) an amount in cash equal to the product

of (1) the number of shares of Common Stock (other than Dissenting Shares) held by such holder of Common Stock immediately prior to the Effective Time and (2) the Per Share Common Stock Merger Consideration (calculated as of the Closing Date), as set forth on the Payout Spreadsheet, in each case by wire transfer of immediately available funds to the account(s) designated by such holder in such holder's Letter of Transmittal.

1.11 Calculation and Payment of the Final Merger Consideration.

(a) Within sixty (60) days following the Closing Date, Parent shall cause the Surviving Corporation to prepare and deliver to the Stockholders' Representative its determination of the Merger Consideration, including statements of the Company Debt, Company Transaction Expenses, Company Change in Control Payments, Deferred Revenue, Net Working Capital and Company Cash (each, a "***Final Statement***" and collectively, the "***Final Statements***"). Parent shall (i) cause the Surviving Corporation to provide the Stockholders' Representative with reasonable access during normal business hours and upon reasonable notice to the Records of the Surviving Corporation which were used to prepare the Final Statements and (ii) use commercially reasonable efforts to provide the Stockholders' Representative reasonable access during normal business hours and upon reasonable notice to the Surviving Corporation's personnel who prepared the Final Statements, in each case, to verify the Final Statements.

(b) If the Stockholders' Representative objects to the Surviving Corporation's determination of the Company Debt, Company Transaction Expenses, Company Change in Control Payments, Deferred Revenue, Net Working Capital and Company Cash, as reflected in the Final Statements, the Stockholders' Representative shall notify Parent in writing of such objection(s) within thirty (30) days after delivery of the Final Statements from the Surviving Corporation (an "***Objection Notice***"). The Objection Notice shall specify which Final Statement(s) are being disputed, describe in reasonable detail the basis for such disputes and provide the Stockholders' Representative final determination of the Merger Consideration, including statements of the Company Debt, Company Transaction Expenses, Company Change in Control Payments, Deferred Revenue, Net Working Capital and Company Cash for which a dispute exists.

(c) If the Stockholders' Representative delivers an Objection Notice with respect to one or more Final Statements in accordance with Section 1.11(b), then the Stockholders' Representative and Parent shall attempt in good faith to resolve such disputed items. Any amounts on the Final Statement not objected to by the Stockholders' Representative in a timely delivered Objection Notice shall be final, conclusive and binding on the parties.

(d) In the event that Parent and the Stockholders' Representative are unable to resolve the disputed items within thirty (30) days after delivery of the Objection Notice, either Parent or the Stockholders' Representative may demand that such disputed items be referred to KPMG LLP or such other independent accounting firm as is mutually acceptable to Parent and the Stockholders' Representative to finally resolve such disputed items. The independent accounting firm shall act as an arbitrator to determine only the disputed items, and the determination of each disputed item shall be within the range established by the Final Statements and the Objection Notice, based solely on the written presentations by Parent and the Stockholders' Representative and not by independent review. The determination of such

independent accounting firm shall be made as promptly as possible and shall be final and binding upon the parties absent manifest error or fraud. No discovery will be permitted and no arbitration hearing will be held. Parent and the Stockholders' Representative, on behalf of the Effective Time Holders, shall each pay their own costs and expenses incurred under this Section 1.11(d). All expenses and fees incurred in connection with the independent accounting firm shall be paid (i) by Parent or the Surviving Corporation, if the Stockholders' Representative's entire position is accepted by the independent accounting firm, (ii) by the Stockholders' Representative, on behalf of the Effective Time Holders, if the Surviving Corporation's entire position is accepted by the independent accounting firm and (iii) equally by Parent or the Surviving Corporation on one hand and the Stockholders' Representative, on behalf of the Effective Time Holders, on the other hand, if neither the Surviving Corporation's or Stockholders' Representative's entire position is accepted by the independent accounting firm.

(e) The Company Debt, Company Transaction Expenses, Company Change in Control Payments, Deferred Revenue, Net Working Capital and Company Cash as determined in accordance with this Section 1.11 shall be used to determine the final Merger Consideration in accordance with Section 1.6(a) (the "***Final Merger Consideration***"). Once the Final Merger Consideration is determined in accordance with Section 1.6(a) and this Section 1.11, the following shall occur:

(i) if the Final Merger Consideration exceeds the Estimated Merger Consideration (such difference, the "***Excess Purchase Price***"), subject to Section 1.18 below, Parent shall (x) pay (or cause the Surviving Corporation to pay) to each Effective Time Holder an amount equal to the product of (A) such Effective Time Holder's Adjustment Pro Rata Share, **multiplied** by (B) the Excess Purchase Price within five (5) business days following final determination of the Final Merger Consideration and (y) Parent and the Stockholders' Representative shall instruct the Escrow Agent to distribute the remainder of the Adjustment Escrow Amount within three (3) business days following delivery of such written notice in accordance with the terms of the Escrow Agreement to the Effective Time Holders in proportion to such Effective Time Holders' Adjustment Pro Rata Share as provided for in the Escrow Agreement; or

(ii) if the Estimated Merger Consideration exceeds the Final Merger Consideration (such difference, the "***Deficient Purchase Price***"), Parent and the Stockholders' Representative shall instruct the Escrow Agent to distribute an amount equal to the Deficient Purchase Price to Parent from the Adjustment Escrow Amount within three (3) business days following delivery of such written notice in accordance with the terms of the Escrow Agreement; provided that, if the Adjustment Escrow Amount is not sufficient to fund the Deficient Purchase Price (the difference between the Deficient Purchase Price and the Adjustment Escrow Amount, the "***Shortfall Amount***"), (x) Parent and the Stockholders' Representative shall instruct the Escrow Agent to distribute such Shortfall Amount from the Indemnity Escrow Amount to Parent within three (3) business days following delivery of such written notice in accordance with the terms of the Escrow Agreement and (y) the Effective Time Holders shall, in proportion to such Effective Time Holders' Indemnity Pro Rata Share, replenish the Indemnity Escrow Amount by the amount of the Shortfall Amount. If there are amounts remaining in the Adjustment Escrow Amount after the payment contemplated herein, then Parent and the Stockholders' Representative shall instruct the Escrow Agent to distribute the remainder of such Adjustment

Escrow Amount to the Effective Time Holders in proportion to such Effective Time Holders' Adjustment Pro Rata Share within three (3) business days following delivery of such written notice in accordance with the terms of the Escrow Agreement.

1.12 Conversion of Shares.

(a) **Conversion.** Subject to Sections 1.15 and 1.16, at the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any stockholder of the Company, each share of Company Capital Stock outstanding immediately prior to the Effective Time shall be cancelled and retired and shall cease to exist or have any rights except for the right to receive from Parent, following the surrender of the certificate representing such share of Company Capital Stock in accordance with Section 1.15, the following consideration:

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

(ii) each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive the Per Share Common Stock Merger Consideration or Per Share Preferred Stock Merger Consideration, as applicable; and

(iii) each share of the common stock, par value \$0.01 per share, of Merger Sub outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Corporation.

(b) The amount of cash, if any, that each stockholder of the Company is entitled to receive for the shares of Company Capital Stock held by such stockholder shall be rounded to the nearest cent (with \$0.005 being rounded upward) and computed after aggregating the cash amounts payable for all shares of Company Capital Stock held by such stockholder, in each case as set forth on the Payout Spreadsheet.

1.13 Treatment of Stock Options and Warrants.

(a) **Option Termination.** At the Effective Time, each then-outstanding Company Option shall be cancelled without the payment of cash or issuance of other securities in respect thereof.

(b) **Termination of the Company Option Plan.** The Company Option Plan shall terminate as of the Effective Time and the provisions in any other plan, program or arrangement providing for the issuance or grant of any other interest in respect of the Company Capital Stock shall be canceled as of the Effective Time. The Company shall ensure that following the Effective Time no participant in the Company Option Plan or other plans, programs or arrangements shall have any right thereunder to acquire any equity securities of the Company, the Surviving Corporation or any Subsidiary thereof.

(c) **Option Plan Notices.** Prior to the Effective Time, the Company shall deliver to the holders of Company Options notices, in form and substance reasonably acceptable to Parent, setting forth such holders' rights pursuant to this Agreement.

(d) **Other Actions.** Prior to the Effective Time, the Company shall take all actions that may be necessary or that Parent considers appropriate (under the Company Option Plan or otherwise) to effectuate the provisions of this Section 1.13 and to ensure that, from and after the Effective Time, holders of Company Options have no rights with respect to such Company Options.

(e) **Warrant Cancellation.** Prior to the Effective Time, the Company shall take all actions that may be necessary or that Parent considers appropriate to ensure that all warrants to purchase shares of Company Capital Stock ("**Company Warrants**") that are outstanding and unexercised as of the date of this Agreement will have been exercised or canceled and to ensure that, from and after the Effective Time, holders of such warrants have no rights with respect to such warrants.

1.14 Closing of the Company's Transfer Books. At the Effective Time, holders of certificates representing shares of the Company Capital Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of the Company, and the stock transfer books of the Company shall be closed with respect to all shares of such Company Capital Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of the Company Capital Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any of such shares of Company Capital Stock (a "**Company Stock Certificate**") is presented to the Surviving Corporation or Parent, such Company Stock Certificate shall be canceled and shall be exchanged as provided in Section 1.15.

1.15 Surrender and Payment. If a holder of Company Capital Stock surrenders their Company Stock Certificates together with a completed Letter of Transmittal, Stockholder Written Consent and Joinder prior to the Closing Date and such holder is the record holder as of the Closing Date, then Parent shall (or shall cause the Surviving Corporation to) pay at the Closing to the holder of such Company Capital Stock an amount in accordance with Section 1.10(b) and such Company Stock Certificate shall be cancelled pursuant and subject to the terms of Section 1.12(a). At or as soon as practicable after the execution of this Agreement (and in any event within five (5) business days following the execution of this Agreement), the Company will send to the holders of Company Capital Stock (who have not previously delivered executed copies of such documents as contemplated by the previous sentence): (i) a Letter of Transmittal, Stockholder Written Consent and Joinder, and (ii) instructions for use in effecting the surrender of Company Stock Certificates in exchange for payment of the Per Share Common Stock Merger Consideration or Per Share Preferred Stock Merger Consideration, as applicable, relating thereto. If a holder of Company Capital Stock surrenders their Company Stock Certificates together with a completed Letter of Transmittal and Stockholder Written Consent anytime after two (2) days prior to the Closing Date and such holder is the record holder as of the Closing Date, then the holder of such Company Capital Stock shall be paid as soon as reasonably practical in accordance with Section 1.10(b) and such Company Stock Certificate shall be cancelled pursuant and subject to the terms of Section 1.12(a). Upon surrender of a Company Stock Certificate to

Parent for exchange, together with a duly executed Letter of Transmittal and such other documents as may be reasonably required by Parent, at or after the Effective Time, the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor payment of an amount equal to the Per Share Common Stock Merger Consideration or Per Share Preferred Stock Merger Consideration for the Company Capital Stock represented by such Company Stock Certificate multiplied by the number of shares represented by such Company Stock Certificate, and the Company Stock Certificate so surrendered shall be canceled. Until surrendered as contemplated by this Section 1.15, each Company Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive upon such surrender the Per Share Common Stock Merger Consideration or Per Share Preferred Stock Merger Consideration applicable thereto and no interest will be paid or accrued for the benefit of such holder on the Merger Consideration payable upon the surrender of such Company Stock Certificates. If any Company Stock Certificate shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the payment of the applicable portion of Merger Consideration, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate affidavit and to deliver a bond (in such sum as Parent may reasonably direct) as indemnity against any claim that may be made against Parent or the Surviving Corporation with respect to such Company Stock Certificate.

1.16 Dissenting Shares.

(a) Notwithstanding any other provision of this Agreement to the contrary, shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and that are held by stockholders of the Company who shall have not voted in favor of the Merger or consented thereto in writing and who shall have properly demanded appraisal for such shares in accordance with Section 262 of the DGCL and have not effectively withdrawn, lost or failed to perfect such appraisal rights (collectively, the “*Dissenting Shares*”) shall not be converted into or represent the right to receive a portion of the Merger Consideration. Such stockholders instead shall be solely entitled to receive payment from the Surviving Corporation of the appraised value of such shares of Company Capital Stock held by them in accordance with the provisions of Section 262 of the DGCL, unless and until the holder of any such Company Capital Stock shall have failed to perfect or shall have effectively withdrawn or lost his, her or its right to appraisal and payment under the DGCL, in which case such Company Capital Stock shall thereupon be deemed, as of the Effective Time, to have been cancelled and retired and to have ceased to exist and been converted into the right to receive, upon surrender of such Company Stock Certificate in accordance with Section 1.15, without interest, in accordance with this Agreement, the Per Share Common Stock Merger Consideration or Per Share Preferred Stock Merger Consideration applicable thereto. From and after the Effective Time, no stockholder who has demanded appraisal rights shall be entitled to vote his, her or its shares of Company Capital Stock for any purpose or to receive payment of dividends or other distributions on his, her or its shares (except dividends or other distributions payable to stockholders of record at a date prior to the Effective Time). The Company shall give Parent (i) prompt notice of any demands for appraisal received by the Company, any attempted withdrawals of such demands and any other instruments relating to stockholders’ rights of appraisal under DGCL, in each case, received by the Company prior to the Closing, and (ii) the opportunity to participate in negotiations and proceedings with respect to demands for appraisal. Prior to the Closing, the Company shall not, without the prior written consent of Parent,

voluntarily make any payment with respect to, or settle, or offer or agree to settle, any such demand.

(b) Notwithstanding the provisions of Section 1.16(a), if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) his, her or its appraisal rights, then, as of the Effective Time, such holder's shares of Company Capital Stock shall automatically be deemed to have been cancelled and retired and been converted into and represent only the right to receive the consideration for Company Capital Stock to which such stockholder would otherwise be entitled under Section 1.10(b), without interest thereon, upon surrender of the certificate representing such shares and a completed Letter of Transmittal and Joinder in accordance with Section 1.15.

1.17 Further Action. If, at any time after the Effective Time, any further action is determined by Parent to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation or Parent with full right, title and possession of and to all rights and property of Merger Sub and the Company, the officers and directors of the Surviving Corporation, Parent and the Stockholders' Representative shall be fully authorized (in the name of Merger Sub, in the name of the Company and otherwise) to take such action.

1.18 Withholding Rights. Parent, the Surviving Corporation and the Company shall be entitled to deduct and withhold from the consideration payable pursuant to this Agreement to any Person an amount not in excess of the amount they are required to deduct and withhold with respect to the payment of such consideration under the Code or any provision of state, local or foreign Tax or other Legal Requirement, and shall pay over any such amounts to the appropriate Taxing Authority. To the extent that amounts are so withheld by or on behalf of Parent, the Surviving Corporation or the Company, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which such deduction and withholding was made.

SECTION 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Merger Sub that the statements contained in this SECTION 2 are true and correct as of the date hereof (except, as to any representations and warranties that specifically relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date), except as expressly set forth on the Disclosure Schedule attached hereto (the "***Disclosure Schedule***"). The Disclosure Schedule shall be arranged in numbered sections and subsections corresponding to the sections and subsections contained in this SECTION 2 and any information disclosed therein under any section or subsection of the Disclosure Schedule shall be deemed disclosed and incorporated into any other section or subsection of the Disclosure Schedule only to the extent that the relevance of such disclosure to such other section or subsection of the Disclosure Schedule is reasonably apparent on the face of the disclosure contained therein that such deemed disclosure and incorporation would be appropriate. Capitalized terms used in the Disclosure Schedules and not otherwise defined therein shall have the meanings given to them in the Agreement.

2.1 Existence and Power. Each of the Company and its Subsidiary is a corporation duly organized, validly existing and in good standing under the Legal Requirements of the State of Delaware and has all necessary power and authority to conduct its business in the manner in which its business is currently being conducted and to own and use its assets in the manner in which its assets are currently owned and used. The Company and its Subsidiary, as applicable, are duly qualified or licensed to do business as a foreign corporation and are in good standing in each jurisdiction set forth on Section 2.1 of the Disclosure Schedule. Each of the Company and its Subsidiary is duly qualified or licensed to do business as a foreign corporation and is in good standing in each jurisdiction where the character of the property owned or leased by it or the nature of its activities makes such qualification or license necessary, except such jurisdictions where the failure to be so qualified or licensed or in good standing would not, individually or in the aggregate, reasonably be expected to be material to the Company and its Subsidiary taken as a whole. The Company has heretofore made available to Parent true and complete copies of the Company Charter, its bylaws, its other organizational documents and the organizational documents of its Subsidiary as currently in effect (including all amendments made thereto at any time on or before the date hereof) and neither the Company nor its Subsidiary is in default under or in violation of any provision thereunder.

2.2 Corporate Authorization.

(a) The execution, delivery and performance by the Company of this Agreement and the Transaction Documents to which the Company is to be a party and the consummation by the Company of the Transactions are within the Company's corporate powers and, except for the Stockholder Written Consents, have been duly authorized by all necessary corporate action on the part of the Company. This Agreement has been, and each Transaction Document to which the Company is to be a party has been, duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, reorganization, insolvency and other similar Legal Requirements affecting the enforcement of creditors' rights in general and to general principles of equity (regardless of whether considered in a proceeding in equity or an action at law).

(b) At a meeting duly called and held, the Company's Board of Directors has (i) by requisite majority vote (including all independent directors on the Company's Board of Directors) determined that this Agreement, the Transaction Documents to which the Company is to be a party and the consummation by the Company of the Transactions are fair to and in the best interests of the stockholders of the Company, (ii) by requisite majority vote (including all independent directors on the Company's Board of Directors) approved and adopted this Agreement, the Transaction Documents to which the Company is to be a party and the consummation by the Company of the Transactions, (iii) by requisite majority vote (including all independent directors on the Company's Board of Directors) resolved to recommend approval and adoption of this Agreement and the Merger by its stockholders and (iv) by requisite majority vote (including all independent directors on the Company's Board of Directors) directed that this Agreement and the Merger be submitted to the stockholders of the Company for their approval on the date hereof. The only votes or consents required to approve this Agreement by the Company's stockholders under the DGCL (and any other applicable Legal Requirements) and the Company Charter are set forth on Section 2.2(b) of the Disclosure Schedule. Other than as set

forth in this Section 2.2(b), no other proceedings or actions on the part of the Company are necessary to approve and authorize the execution and delivery of this Agreement and the Transaction Documents to which the Company is to be a party and the consummation by the Company of the Transactions.

2.3 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 13,231,000 shares of Common Stock, of which, 2,617,175 shares are issued and outstanding and are owned of record by the holders and in the amounts set forth on Section 2.3(a)(i) of the Disclosure Schedule and (ii) 6,243,083 shares of Preferred Stock, of which, 6,243,083 shares are issued and outstanding and are owned of record by the holders and in the amounts set forth on Section 2.3(a)(i) of the Disclosure Schedule, and which are convertible into 6,243,083 shares of Common Stock. All outstanding shares of Company Capital Stock (1) are duly authorized, validly issued, fully paid and non-assessable and are not subject to, nor were they issued in violation of, preemptive rights or right of first refusal created by statute, the Company Charter or bylaws or any Contract to which the Company is a party or by which it is bound, and (2) have been offered, sold and delivered by the Company in compliance with all applicable Legal Requirements.

(b) Except for the Company Option Plan, the Company does not sponsor or maintain any stock option plan or any other plan or agreement providing for equity compensation or profit participation features (whether contingent or otherwise) to any Person. The Company Option Plan has been duly authorized, approved and adopted by the Company's Board of Directors and its stockholders and is in full force and effect. The Company has reserved a total of 2,274,940 shares of Common Stock for issuance under the Company Option Plan, of which, as of the date hereof: (i) 1,705,320 shares are issuable upon the exercise of outstanding, unexercised Company Options and (ii) 569,620 shares are available for grant but have not yet been granted pursuant to the Company Option Plan. All outstanding Company Options have been offered, issued and delivered by the Company in compliance with all applicable Legal Requirements and with the terms and conditions of the Company Option Plan. Following the Effective Time, all Company Options and the Company Option Plan will be cancelled or terminated as provided herein, as applicable, and of no further force or effect without any Liability to the Company, Surviving Corporation, Parent or their Affiliates or any other Person arising therefrom.

(c) Except for the outstanding Company Options identified and set forth on Section 2.3(c) of the Disclosure Schedule (including the applicable exercise or strike price and vesting schedule of each such Company Option) or as otherwise set forth on Section 2.3(c) of the Disclosure Schedule, there are no options, warrants, subscriptions, calls, rights, convertible securities, commitments or agreements of any character, written or oral, obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any Company Capital Stock, or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, subscription, call, right, commitment or agreement or any securities or obligations of any kind convertible into or exchangeable for any shares of Company Capital Stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, contingent value or other similar rights with respect to the Company.

(d) Except as set forth in Section 2.3(d) of the Disclosure Schedule, (i) there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company to which the Company is a party, by which the Company is bound, or of which the Company has Knowledge, and (ii) there are no agreements or understandings relating to the registration, sale or transfer (including agreements relating to rights of first refusal, “co-sale” rights, “drag-along” rights or registration rights) of any Company Capital Stock, or any other investor rights, including, without limitation, rights of participation (i.e., pre-emptive rights), co-sale, voting, first refusal, board observation, visitation or information or operational covenants (the items described in clauses (i) and (ii) being, collectively, the “**Rights Agreements**”). On or prior to the Effective Time, all Rights Agreements shall have been terminated and of no further force or effect. No direct or indirect holder of any Company Capital Stock has asserted any claim or rights against the Company that remains unresolved or to which the Company has or may have (now or in the future) any material Liability and to the Company’s Knowledge, no such claim is overtly threatened.

(e) The Warrant to Purchase Common Stock held by American Institute of Certified Public Accountants, Inc., dated as of September 10, 2012 (the “**Warrant**”), will be cancelled prior to the Closing pursuant to that warrant termination letter agreement, dated as of August 15, 2013, by and between the Company and American Institute of Certified Public Accountants, Inc., and at and following the Closing, neither the Company nor its Subsidiary (nor Parent) shall have any Liability in respect of the Warrant or the warrant termination letter agreement.

2.4 Subsidiary.

(a) Except for NFi Studios, Inc., a Florida corporation (“**NFi**”), the Company does not have, and, to the Company’s Knowledge, has never had, any Subsidiaries, and does not own or hold any equity or other interest of any other Person or any rights to acquire any such equity or other interest. The Company has no obligation to make any investment (in the form of a loan, capital contribution or otherwise) in any Person. Neither the Company nor its Subsidiary has any Liability with respect to any former direct or indirect Subsidiaries (if any).

(b) Section 2.4(b) of the Disclosure Schedule sets forth the number of issued and outstanding shares of capital stock of NFi. All of the capital stock of NFi is validly issued, fully paid and nonassessable, and owned by the Company free and clear of all Liens. There are no options, warrants, subscriptions, calls, rights, convertible securities, commitments or agreements of any character, written or oral, obligating NFi to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any of its capital stock, or obligating NFi to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, subscription, call, right, commitment or agreement or any securities or obligations of any kind convertible into or exchangeable for any shares of NFi’s capital stock. Except as set forth in Section 2.4(b) of the Disclosure Schedule, (i) there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of NFi to which NFi is a party, by which NFi is bound, or of which the Company has Knowledge, and (ii) there are no agreements or understandings relating to the registration, sale or transfer (including agreements relating to rights of first refusal, “co-sale” rights, “drag-along” rights or registration rights) of any capital stock of NFi, or any other investor rights, including,

without limitation, rights of participation (i.e., pre-emptive rights), co-sale, voting, first refusal, board observation, visitation or information or operational covenants.

2.5 Governmental Authorization. Except as set forth on Section 2.5 of the Disclosure Schedule, the execution, delivery and performance by the Company of this Agreement, each of the Transaction Documents to which the Company is to be a party and the Merger require no material action by or in respect of, notice to or filing with, any Governmental Body, other than the filing of the Certificate of Merger with the secretary of state of Delaware.

2.6 Non-Contravention. Except as set forth on Section 2.6 of the Disclosure Schedule, the execution, delivery and performance by the Company of this Agreement and the Transaction Documents to which the Company is a party and the consummation of the Transactions do not and will not (with or without notice or lapse of time or both) (a) contravene, conflict with, give rise to any modification or right of termination, cancellation or acceleration with respect to or result in the obligation to make any material payment (including, without limitation, any change of control, severance or similar payment), or result in any violation or breach of any provision of or result in any material loss of benefit under, (b) require any consent, authorization, notice, filing with or other action by any Person under, (c) constitute a material default under, (d) result in a material violation of, or (e) result in the creation or imposition of any Lien on the capital stock or other equity interests of or any material assets of the Company or its Subsidiary, under (i) the Company Charter or the other the organizational documents of the Company or its Subsidiary, (ii) any terms, conditions or provision of any Contract or other instrument binding upon the Company or its Subsidiary or any license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of the Company or its Subsidiary, or (iii) any Governmental Order or Legal Requirement to which the Company or its Subsidiary or any of their respective assets is subject.

2.7 Financial Statements.

(a) Attached hereto on Section 2.7 of the Disclosure Schedule are true and accurate copies of (a) the unaudited balance sheet of the Company as of June 30, 2013 (the “**Most Recent Balance Sheet**”) and the related unaudited statements of operations and retained earnings and cash flows for the 6-month period ended on the date of the Most Recent Balance Sheet (collectively, the “**Interim Financial Statements**”); and (b) the audited balance sheets of the Company as of December 31, 2012 and December 31, 2011, and the related audited statements of operations and retained earnings and cash flows for the years then ended, together with the notes thereto (collectively, the “**Audited Financial Statements**” and together with the Interim Financial Statements, the “**Financial Statements**”). The Financial Statements have been prepared in accordance with GAAP consistently applied throughout the periods indicated, except for the absence of footnotes in the case of the Interim Financial Statements. Each of the Financial Statements (i) are accurate and complete in all material respects and (ii) present fairly in all material respects the financial condition and operating results of the Company and its Subsidiary as of their respective dates and the statements of operations and retained earnings and cash flows for the respective periods then ended, subject, in the case of the Interim Financial Statements, to normal year-end adjustments (which are not material individually or in the aggregate). The Financial Statements are consistent with, and derived from, the books and records of the Company and its Subsidiary (which, in turn, are accurate and complete in all material respects).

Except as reflected in the Financial Statements, neither the Company nor its Subsidiary has any off-balance sheet Liability of any nature, the purpose or effect of which is to defer, post-pone, reduce or otherwise avoid or adjust the recovery of debts incurred by the Company.

(b) The Company and its Subsidiary have established and adhered to a system of internal accounting controls appropriate for its size and the industry in which they operate which are designed to provide assurance regarding the reliability of financial reporting. Since 2008, there has not been (i) any significant deficiency or weakness in the system of internal accounting controls used by the Company and its Subsidiary, (ii) any fraud or other wrongdoing that involves any of the Company's or its Subsidiary's management or, to the Company's Knowledge, other employees who have a role in the preparation of financial statements or the internal accounting controls used by the Company and its Subsidiary or (iii) any claim or allegation regarding any of the foregoing.

2.8 Company Debt; No Undisclosed Liabilities.

(a) Section 2.8(a) of the Disclosure Schedule accurately lists all Company Debt, including, for each item of Company Debt, the agreement(s) governing the Company Debt and, if applicable, the interest rate, maturity date and any assets or properties securing such Company Debt.

(b) Except as set forth on Section 2.8(b) of the Disclosure Schedule, neither the Company nor its Subsidiary has any Liabilities (and there is no existing condition, fact or set of circumstances that could reasonably be expected to result in any Liability) that are not fully reflected or provided for on the face of the Most Recent Balance Sheet, except (i) post-Closing performance obligations under Contracts described on Section 2.13(a) of the Disclosure Schedule or under Contracts entered into in the ordinary course of business which, because of the dollar thresholds set forth in Section 2.13(a), are not required to be described on Section 2.13(a) of the Disclosure Schedule (but, in any event, not Liabilities for breaches or non-performance of any such Contracts), (ii) Liabilities of the type set forth on the face of the Most Recent Balance Sheet which have arisen after the date of the Most Recent Balance Sheet in the ordinary course of business (none of which is a Liability for breach of Contract, tort, infringement, claim, lawsuit, warranty, or environmental, health or safety matter), and (iii) Liabilities which individually, or in the aggregate, do not exceed \$100,000.

2.9 Absence of Certain Changes. Except as set forth on Section 2.9 of the Disclosure Schedule, since December 31, 2012, the Company and its Subsidiary have conducted, operated and managed their businesses (including the Business) in the ordinary course of business consistent with past practices. Except as set forth in Section 2.9 of the Disclosure Schedule, in addition, since December 31, 2012, neither the Company nor its Subsidiary has:

(a) suffered any material loss, or material interruption in use, of any asset or property (whether or not covered by insurance), on account of fire, flood, riot, strike or other hazard, in excess of \$50,000 in any individual case or \$100,000 in the aggregate;

(b) made any capital expenditure or capital commitment in excess of \$50,000 in any individual case or \$100,000 in the aggregate;

(c) amended or changed the Company's Charter or bylaws or the governing documents of the Company's Subsidiary;

(d) changed its accounting methods, principles or practices;

(e) declared, set aside or paid any dividend or other distribution with respect to any shares of capital stock or other ownership interests or repurchased or redeemed or committed to repurchase or redeem any shares of capital stock or other ownership interests other than in the ordinary course of business consistent with past practices or issued, sold or transferred any shares of capital stock or other ownership interests;

(f) (i) other than in the ordinary course of business consistent with past practice paid any material bonus to any Person, (ii) materially increased any salary, wages or other compensation for any director or officer or, other than in the ordinary course of business, any employee, or entered into new employment, severance, consulting, or other compensation arrangements with any of its existing employees, (iii) terminated the employment of any individual if such termination would trigger material obligations under any change of control or severance arrangement or (iv) instituted any new employee welfare, bonus, stock option, profit-sharing, retirement or similar plan or arrangement with, any of its directors, officers or employees resulting in additional material Liability to the Company;

(g) merged into, consolidated with, or sold a substantial part of its assets to any other Person, made any acquisition of any capital stock or business of any other Person (whether by merger, stock or asset purchase or otherwise), or permitted any other Person to be merged or consolidated with it;

(h) suffered any Material Adverse Effect;

(i) conducted its cash management customs and practices other than in the ordinary course of business (including with respect to collection of accounts receivable, repairs and maintenance, payment of accounts payable, accrued expenses or other Liabilities, levels of capital expenditures, pricing and credit practices and operation of cash management practices generally);

(j) delayed or postponed the repair and maintenance of its properties or the payment of accounts payable, accrued liabilities or other obligations and Liabilities;

(k) made any write-off or write-down, or any determination to write-off or write-down, or revalue, any of its material assets and properties (including notes or accounts receivables) or change in any respect any reserves associated therewith, or waive or release any material right or claim;

(l) incurred or suffered any Indebtedness or incurred or became subject to any other material Liability, except current Liabilities incurred in the ordinary course of business (none of which is a Liability for breach of Contract, tort, infringement, claim, lawsuit, warranty, or environmental, health or safety matter);

(m) made any loans or advances to, investments in, or guarantees for the benefit of, or otherwise became liable for the Indebtedness or other legal obligation of, any Person;

(n) engaged in any promotional sale or discount or other activity with customers that was intended to have, or, other than in the ordinary course of business consistent with past practice, has had or would reasonably be expected to have the effect of accelerating to pre-Closing periods accounts receivable that would otherwise be expected to occur in post-Closing periods;

(o) settled or compromised any Legal Proceeding or other dispute other than settlements or compromises for Legal Proceedings or other disputes where the amount paid in settlement or compromise did not exceed \$25,000 in any individual case or \$50,000 in the aggregate, for all such Legal Proceedings or other disputes;

(p) made or changed any material Tax election, changed any accounting methods, practices or periods, filed any amended Tax Return, entered into any closing agreement with respect to Taxes, settled any Tax claim or assessment, surrendered any right to claim a refund of Taxes, consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment, in each case when such election, change, filing, agreement, settlement, surrender or consent is reasonably expected to have the effect of increasing the Tax liability of the Company for any period ending after the Closing Date;

(q) entered into (other than in the ordinary course of business), amended or terminated any Material Contract or material Permit;

(r) sold, leased, assigned, transferred, abandoned, permitted to lapse or otherwise disposed of any material rights, assets or properties, tangible or intangible;

(s) canceled without fair consideration any material debts or material claims owing to or held by it;

(t) became subject to any obligation that prohibits the Company or its Subsidiary from freely engaging in business anywhere in the world or that otherwise restricts any activities of the Company or its Subsidiary;

(u) sold, assigned, licensed, abandoned, transferred, permitted to lapse, or otherwise disposed of any material Company Intellectual Property, except for non-exclusive licenses of the Company Products to customers entered into in the ordinary course of business; or

(v) agreed or committed to do any of the foregoing.

2.10 Properties; Sufficiency of Assets.

(a) Neither the Company nor its Subsidiary owns any real property. The Company and its Subsidiary lease or sublease all real property used in the Business as now conducted and proposed to be conducted. Section 2.10(a) of the Disclosure Schedule sets forth a

true and complete list of all Leases (including all amendments, extensions, renewals, guaranties and other agreements with respect thereto) and the addresses of all Leased Real Property, specifying the date of the Lease, the name of the lessor or sublessor, the lease term and basic annual rent. The Company has delivered to Parent a true and complete copy of each such Lease document, and in the case of any oral Lease, a written summary of the material terms of such Lease. Except as set forth on Section 2.10(a) of the Disclosure Schedule, with respect to each Lease: (i) such Lease is legal, valid, binding, enforceable and in full force and effect, subject to (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws of general application affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law); (ii) the Merger does not require the consent of any other party to such Lease, will not result in a breach of or default under such Lease, or otherwise cause such Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing; (iii) the Company or its Subsidiary and to the Company's Knowledge any other party to the Lease are not in breach or default under such Lease, and, to the Company's Knowledge, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Lease; (iv) the other party to such Lease is not an Affiliate of, and otherwise does not have any economic interest in, the Company or its Subsidiary; (v) the buildings, structures, improvements, fixtures, building systems and equipment, and all components thereof, included in the Leased Real Property under such Lease are in good condition and repair, ordinary wear and tear excepted, and sufficient for the operation of the Business; (vi) the Company's or its Subsidiary's possession and quiet enjoyment of the real property under such Lease has not been disturbed, and to the Company's Knowledge, there are no disputes with respect to such Lease; (vii) no security deposit or portion thereof deposited with respect to such Lease has been applied in respect of a breach or default under such Lease which has not been redeposited in full; (viii) neither the Company nor its Subsidiary owes any brokerage commissions or finder's fees with respect to such Lease; (ix) neither the Company nor its Subsidiary has subleased, licensed or otherwise granted any Person the right to use or occupy such real property or any portion thereof; (xi) neither the Company nor its Subsidiary has collaterally assigned or granted any other security interest in such Lease or any interest therein; and (xii) there are no Liens on the estate or interest created by such Lease.

(b) Section 2.10(b) of the Disclosure Schedule describes all personal property leased or subleased by the Company or its Subsidiary with a value greater than \$5,000, including but not limited to machinery, equipment, furniture, vehicles, and other trade fixtures and fixed assets, and any Liens thereon, specifying the name of the lessor or sublessor, the lease term and basic annual rent. To the Company's Knowledge, all leases of such personal property are in good standing and are valid, binding and enforceable in accordance with their respective terms, and there does not exist under any such lease any material breach by the Company or its Subsidiary or any event known to the Company or its Subsidiary that with notice or lapse of time or both, would constitute a material default.

(c) The Company or its Subsidiary owns good and valid title to, or a valid leasehold interest in, all of the material properties and assets, tangible or intangible, necessary for the operation of the Business or otherwise used by it, located on its premises, or, if applicable, shown on the Most Recent Balance Sheet or acquired thereafter, free and clear of all Liens (other

than (i) Permitted Liens, (ii) Liens which will be released at or prior to the Closing (or which consent to release has been obtained), set forth on Section 2.10(c) of the Disclosure Schedule securing Company Debt reflected on the Most Recent Balance Sheet, (iii) common law Liens to secure obligations to lessors or renters under leases or rental agreements not in default, and (iv) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable law). Except as disclosed on Schedule 2.10(c) of the Disclosure Schedule, the Company or its Subsidiary owns, or has a valid leasehold interest in, all properties and assets necessary for the conduct of their respective businesses as presently conducted. To the Company's Knowledge, no Effective Time Holder owns (other than indirectly through such holder's equity ownership) any assets used by the Company or its Subsidiary. The Company's buildings, improvements, fixtures, machinery, equipment and other tangible assets (whether owned or leased) are, except for ordinary wear and tear, in good condition and repair in all material respects and are usable in the ordinary course of business.

2.11 Taxes. Except as set forth on Section 2.11 of the Disclosure Schedule:

(a) The Company and its Subsidiary have timely filed (taking into account any extension of time in which to file) all material Tax Returns (which, for avoidance of doubt, includes, without limitation, IRS Form 1120 and all material schedules thereto and any similar state corporate income tax return) that were required to be filed by them, all such Tax Returns, and amendments to such Tax Returns, are accurate and complete in all material respects, and the Company and its Subsidiary have paid all Taxes which are due and payable by them (whether or not shown on any Tax Return). No written claim has been made by any Governmental Body in a jurisdiction where the Company or its Subsidiary does not file Tax Returns that the Company or its Subsidiary is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company or its Subsidiary).

(b) Neither the Company nor its Subsidiary have agreed to, or have been requested to agree to, any extension or waiver of the statute of limitations applicable to a Tax assessment, deficiency, or any of its Tax Returns.

(c) Neither the Company nor its Subsidiary is a party to any Tax allocation, sharing or indemnification agreement under which the Company or its Subsidiary could be liable for Taxes or claims made by another party.

(d) Neither the Company nor its Subsidiary have received any notice of assessment or proposed or threatened assessment in connection with any Tax or a Tax Return, and, there are no Tax examinations, Tax claims or Tax actions currently pending, asserted or threatened, in writing.

(e) All Taxes that the Company and its Subsidiary are (or were) required to withhold or collect in connection with any amounts paid or owing to any employee, independent contractor, creditor or stockholder have been duly withheld or collected and timely paid over to the proper Taxing Authority to the extent due and payable.

(f) Neither the Company nor its Subsidiary have requested any extension of time within which to file any Tax Return, which Tax Return has not since been filed.

(g) Neither the Company nor its Subsidiary have been a United States real property holding corporation within the meaning of Section 897(c)(1)(A)(ii) of the Code during the five (5) year period ending on the Closing Date.

(h) Neither the Company nor its Subsidiary (A) have, during the five (5) year period ending on the date of this Agreement, distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code, (B) is nor have been a party to any “listed transaction,” as defined in Section 6707A(c)(2) of the Code and Treasury Regulation Section 1.6011-4(b)(2), (C) have a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a country other than the country in which it is organized, (D) is and or has been subject to adjustment under Code Section 482 (including any similar provision of state, local, or foreign Tax law), (E) is subject to the dual consolidated loss provisions of Code Section 1503(d), or (F) is not a party to a gain recognition agreement under Code Section 367.

(i) Neither the Company nor its Subsidiary will 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 (A) change in method of accounting pursuant to Section 481 of the Code for a taxable period ending on or prior to the Closing Date (and applicable provision of state and local Tax law); (B) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax law) executed on or prior to the Closing Date; (C) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax law); (D) installment sale or open transaction disposition made on or prior to the Closing Date; (E) prepaid amount received or deferred revenue accrued on or prior to the Closing Date; (F) election under Section 108(i) of the Code; or (G) use of an improper method of accounting for a Pre-Closing Tax Period.

(j) Neither the Company nor its Subsidiary (i) have been a member of an Affiliated Group (other than a group the common parent of which was the Company) filing a consolidated federal income Tax Return or a combined, consolidated, unitary or other affiliated group Tax Return for state, local or foreign Tax purposes or (ii) have any liability for Taxes of any Person (other than the Company or its Subsidiary) 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.

(k) Except as set forth in Section 2.11(k) of the Disclosure Schedule, neither the Company nor its Subsidiary is a party to any agreement, contract, or plan that has resulted or could result, separately or in the aggregate, in the payment of any “excess parachute payment” within the meaning of Section 280G of the Code (or any corresponding provision of state, local, or non-U.S. Tax law) as a result of the consummation of the Transactions.

(l) None of the shares of Common Stock for which a valid election under Section 83(b) of the Code has not been made is non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code.

2.12 Litigation. Except as disclosed in Section 2.11(A) of the Disclosure Schedule, there is no, and during the past three (3) years there have not been any, Legal Proceedings or Governmental Orders pending or overtly threatened against or affecting, the Company or its Subsidiary (or against any of the Company's or its Subsidiary's officers, directors, agents or employees (in each case, in their capacity as such)) or the Transactions. Except as indicated in Section 2.12 of the Disclosure Schedule with an asterisk (*), each of the pending matters required to be disclosed in Section 2.12 of the Disclosure Schedule is fully covered by the Insurance Policies (subject to the deductible set forth in Section 2.12 of the Disclosure Schedule, if applicable). Neither the Company nor its Subsidiary is subject to or bound by any outstanding judgment, order, injunction in connection with any Legal Proceeding.

2.13 Material Contracts.

(a) Section 2.13(a) of the Disclosure Schedule specifically identifies by subsection each of the following Contracts (and any amendments thereto) to which the Company or its Subsidiary is a party or by which the Company or its Subsidiary is otherwise bound:

(i) any Contract with a customer or supplier that involves the payment or receipt of money in excess of \$100,000 for the fiscal year ending December 31, 2012 or during the trailing-twelve months ending on the date of the Most Recent Balance Sheet;

(ii) any Contract that (A) involves a binding commitment by the Company or its Subsidiary to make future payments in excess of \$75,000 in any twelve month period and which is not terminable by the Company or its Subsidiary upon thirty (30) days' or less notice without penalty or Liability, (B) involves a binding commitment by any Person (other than the Company or its Subsidiary) to make future payments to the Company or its Subsidiary in excess of \$75,000 in any twelve month period and which is not terminable by the Company or its Subsidiary upon thirty (30) days' or less notice without penalty or Liability or (C) could result in any Liability to the Company or its Subsidiary (whether due to breach or otherwise) in excess of \$75,000 in any twelve month period and which is not terminable by the Company or its Subsidiary upon thirty (30) days' or less notice without penalty or Liability (in addition, Section 2.13(a)(ii) of the Disclosure Schedule indicates with a plus sign (+) each of the Contracts in clause (A), (B) or (C) that would be required to be disclosed if the dollar threshold contained in this Section 2.13(a)(ii) were \$100,000 rather than \$75,000);

(iii) any partnership, joint venture or other similar Contract;

(iv) any Contract relating to Indebtedness (other than trade payables incurred in the ordinary course of business), letter of credit arrangements, or to mortgaging, pledging or otherwise placing a Lien on any of the Company's or its Subsidiary's assets or to the guaranty of any obligation for borrowed money or otherwise;

(v) any Lease;

(vi) any Contract materially limiting the freedom of the Company or its Subsidiary to engage or participate, or compete with any other Person, in any line of business, market or geographic area;

(vii) any Contract prohibiting the Company or its Subsidiary from disclosing or using trade secrets or confidential information (excluding Contracts with customers entered into in the ordinary course of business pursuant to the form of customer agreement(s) referred to in Section 2.13(c) below);

(viii) any Contract that involves the payment or receipt of money in excess of \$10,000 pursuant to which the Company or its Subsidiary have purchased any real property, or any Contract that involves the payment or receipt of money in excess of \$10,000 pursuant to which the Company is a lessor or lessee of any real property or of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;

(ix) any Contract that provides any customer of the Company or its Subsidiary or any other Person with pricing, discounts or benefits that change based on the pricing, discounts or benefits offered to other customers or other Persons, including, agreements containing “most favored nation” provisions or similar provisions;

(x) any Contract with any Material Customer or Material Supplier;

(xi) any Contract requiring the purchase of all or substantially all of the Company’s or its Subsidiary’s requirements of a particular product from a supplier;

(xii) any management agreement, consulting agreement, employee leasing agreement or contract for the employment or services of any current officer, individual employee, independent contractor, consultant or other Person on a full time, part time, consulting or other basis, or retirement, option, equity or equity-based (e.g., phantom equity), profit sharing, bonus, commission, incentive, severance, separation, change in control, retention, deferred compensation or any other arrangement or understanding (A) providing annual cash or other compensation in excess of \$75,000, (B) providing for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated hereby, or (C) otherwise restricting its ability to terminate the employment or services of any such Person at any time for any lawful reason or for no reason without penalty or Liability;

(xiii) any Contract with any former officer, director, independent contractor or consultant where the Company or its Subsidiary has any remaining material Liability or unpaid obligations;

(xiv) any Contract involving the settlement of any Legal Proceeding with respect to which (1) the settlement exceeds \$25,000 or (2) any unpaid amount or future obligation remains;

(xv) any Contract that relates to an acquisition, divestiture, merger or similar transaction;

(xvi) any collective bargaining agreement or other Contract with any labor organization regarding employees of the Company or its Subsidiary;

(xvii) any Contract relating to (A) the licensing of Intellectual Property by the Company or its Subsidiary to any other Person or by any other Person to the Company or its Subsidiary or (B) the ownership, development, or co-development of any Intellectual Property owned or used by the Company or its Subsidiary, and all other agreements affecting the Company's or its Subsidiary's ability to use, enforce or disclose any Intellectual Property, excluding in each case (1) licenses of commercially-available, off-the-shelf, third-party software licensed by the Company or its Subsidiary for aggregate license fees of less than \$50,000; or (2) non-exclusive licenses to the Company Products granted to customers in the ordinary course of business;

(xviii) any Contract which contains any provision with respect to exclusivity;

(xix) any Contract prohibiting, limiting or otherwise restricting in any way the Company, its Subsidiary and/or their respective officers, directors, managers, equity owners or employees from soliciting customers or suppliers, or soliciting or hiring employees, of any other Person;

(xx) any warranty Contract with respect to its services or products sold, leased or licensed;

(xxi) any Contract with a Governmental Body; or

(xxii) any other Contract not made in the ordinary course of business that is material to the Business or the Company and its Subsidiary taken as a whole.

(b) The Company has made available to Parent complete and correct copies of each Material Contract (and a true and correct written description of all oral Material Contracts), including all amendments, exhibits, attachments and waivers thereto. Each Material Contract (i) is a valid and binding agreement of the Company or its Subsidiary and is in full force and effect, (ii) to the Company's Knowledge, is a valid and binding agreement of the counterparty thereto, (iii) shall be in full force and effect in accordance with its terms upon, and immediately following, the consummation of the Transactions. Except as set forth on Section 2.13(b) of the Disclosure Schedule, the Company or its Subsidiary has performed all material obligations required to be performed by it under each Material Contract and is not in default under or in breach of in any material respect nor in receipt of any claim of default or breach in any material respect under any Material Contract. Without limiting the foregoing, no customer has hosted the Company Software in connection with the provision or distribution of Company Products at facilities not maintained, operated or controlled by the Company or its Subsidiary in connection with the Company or its Subsidiary's failure to perform obligations under any Material Contract, including the failure to comply with relevant service levels or uptime standards, and no event has occurred that (with or without lapse of time) gives any Person the right to demand the ability to host the Company Software in connection with the provision or distribution of Company Products at facilities not maintained, operated or controlled by the Company or its Subsidiary.

For clarity, a limited number of enterprise customers elect to host the Company Software in connection with the provision or distribution of Company Products at facilities maintained, operated or controlled by such customers. To the Company's Knowledge, no event has occurred which with the passage of time or the giving of notice or both would result in a default, breach, non-performance or event of noncompliance by the Company or its Subsidiary under any Material Contract and, to the Company's Knowledge, there has been no breach or cancellation or anticipated breach or cancellation by the other parties to any Material Contract. Neither the Company nor its Subsidiary have triggered any obligation under any Material Contract that provides for a most-favored pricing provision for any customer of the Company to reduce the prices charged to such customer in the future. For purposes of this Agreement, "**Material Contract**" means each Contract listed or required to be listed on Section 2.13(a) of the Disclosure Schedule.

(c) Section 2.13(c) of the Disclosure Schedule sets forth each material current standard form(s) of Contract used by the Company or its Subsidiary including such form(s) of the following types, to the extent applicable to the Company or its Subsidiary: (i) employee agreements for rank-in-file employees containing any assignment or license of Intellectual Property Rights or any confidentiality provision; (ii) confidentiality or nondisclosure agreements with customers or vendors; and (iii) customer agreements, and the Company has made available to Parent a complete and accurate copy of each such standard form set forth on Section 2.13(c) of the Disclosure Schedule. Each Relevant Material Contract that is based on one of the types of standard form(s) set forth in the proceeding sentence (x) materially conforms to such applicable form with respect to indemnification provisions, liquidated damages provisions and provisions granting rights to any Person to the Company's Intellectual Property or Intellectual Property Rights, unless, in each case, otherwise noted with an asterisk (*) on Section 2.13(a) of the Disclosure Schedule and (y) otherwise conforms to such applicable form in all significant respects except for (i) pricing terms, and (ii) that durations of the term of various provisions (for purposes of clarity, any term of 7 years or less shall not be considered significant). Each Relevant Material Contract that is not based on one of the types of standard form(s) set forth in the first sentence of this Section 2.13(c) will be listed on Section 2.13(d) of the Disclosure Schedule. To the extent that any Relevant Material Contract is noted with an asterisk (*) on Section 2.13(a) of the Disclosure Schedule pursuant to this Section 2.13(c), the Disclosure Schedule notes the manner in which such Relevant Material Contract materially deviates from the applicable form.

2.14 Intellectual Property.

(a) Section 2.14(a) of the Disclosure Schedule sets forth a complete and correct list of all of the following that are owned by the Company or its Subsidiary: (i) all issued Patents and Patent applications, (ii) all registered Trademarks and applications for Trademark registrations, (iii) all registered Copyrights and applications for Copyright registrations, (iv) all Domain Name registrations, (v) all material unregistered trademarks, material unregistered service marks, trade names, and corporate names material to the Business as presently conducted, and (vi) all Software owned or purported to be owned by the Company or its Subsidiary for which the Company receives revenue or has ongoing obligations (including maintenance obligations) ("**Company Software**"). Section 2.14(a) of the Disclosure Schedule also lists, where applicable, the name of the applicant/registrant, current owner, the jurisdiction

where the application or registration is located and the application or registration number. For purposes hereof, the term “***Owned Intellectual Property***” means any Intellectual Property owned or purported to be owned by the Company or its Subsidiary.

(b) The Company or its Subsidiary owns and possesses the entire right, title and interest in and to all of the Intellectual Property and Intellectual Property Rights set forth on Section 2.14(a) of the Disclosure Schedule, free and clear of all Liens (other than licenses granted pursuant to the Contracts listed in Section 2.13(a)(xvi)(A) of the Disclosure Schedule or pursuant to non-exclusive licenses granted to customers in the ordinary course of business), and owns and possesses all, right, title and interest in and to, or has a sufficient rights to use, pursuant to a valid and enforceable written license agreement set forth on Section 2.13(a)(xvii) of the Disclosure Schedule (except with respect to off-the-shelf Software not required to be set forth pursuant to Section 2.13(a)(xiv) of the Disclosure Schedule), through implied licenses, by operation of law, or otherwise, all other Intellectual Property and Intellectual Property Rights necessary for the operation of the Business as presently conducted (collectively, the “***Company Intellectual Property***”). Immediately after the Closing, the Company or its Subsidiary shall own or have the right to use all Company Intellectual Property on terms identical to those under which such Company Intellectual Property was owned or used by the Company or its Subsidiary immediately prior to the Closing.

(c) Since January 1, 2008 the Company, its Subsidiary and the operation of the Business have not infringed upon, misappropriated, diluted, or otherwise violated, and does not infringe upon, misappropriate, dilute, or otherwise violate, the Intellectual Property Rights of any other Person. Since January 1, 2008, no claims (i) challenging the validity, enforceability, effectiveness or ownership of any of the Owned Intellectual Property (other than pending applications for registered Owned Intellectual Property) or the ability of the Company or its Subsidiary to register the same, or (ii) to the effect that the Company, its Subsidiary or their operation of the Business (including the use, reproduction, modification, distribution, licensing, sublicensing, sale of the Company Products), infringes, misappropriates, dilutes, or otherwise violates, or will infringe, misappropriate, dilute or otherwise violate, any Intellectual Property Right or other proprietary or personal right of any Person have been asserted against the Company or its Subsidiary in writing (including any unsolicited offers or demands that the Company license the Intellectual Property of any Person) or, to the Knowledge of the Company, are threatened by any Person. There are no Legal Proceedings or Governmental Proceedings, including but not limited to interference, re-examination, reissue, opposition, nullity, or cancellation proceedings pending or, to the Knowledge of the Company, threatened, that relate to any of the registered Owned Intellectual Property (excluding pending applications) that is material to the Business. Since January 1, 2008 the Company and its Subsidiary have neither requested nor received any opinion of counsel related to any of the foregoing. To the Knowledge of the Company, since January 1, 2008 no other Person has infringed, misappropriated, diluted, or otherwise violated any of the Company Intellectual Property owned by the Company or its Subsidiary.

(d) Each employee of the Company or its Subsidiary, and all other Persons who in any material respect have been involved with or participated in the creation or development of any of the Owned Intellectual Property, have executed valid and enforceable inventor assignment agreements, pursuant to which such employees and other Persons have

assigned to the Company or its Subsidiary all of their right, title and interest in, to and under all such Company Intellectual Property. The Company and its Subsidiary have taken all necessary and reasonable action to maintain and protect all of the Company Intellectual Property owned by the Company or its Subsidiary so as not to adversely affect in any material way the validity or enforceability thereof, and the Company and its Subsidiary have taken all necessary and reasonable measures to protect the proprietary nature of the Owned Intellectual Property, including (as to any Trade Secrets included in such Intellectual Property) by taking all necessary and reasonable efforts to ensure that all Trade Secrets have been disclosed by the Company or its Subsidiary only to such Persons who have executed written agreements requiring such Person to keep such Trade Secrets confidential, and has complied with all confidentiality obligations contained in any written, binding agreements pursuant to which it has obtained Trade Secrets or other confidential information of any third parties. To the Knowledge of the Company, there is no and, since January 1, 2008 there has been no misappropriation from the Company or its Subsidiary of any of their respective Trade Secrets by any third party.

(e) Section 2.14(e)(i) of the Disclosure Schedule contains a complete list of all Software used by the Company or its Subsidiary in connection with the Company Products that is: licensed pursuant to: (i) any license that is, or is substantially similar to, a license approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses>, including, without limitation, any licenses such as the GNU General Public License, GNU Lesser General Public License, Eclipse Public License, Common Public License, Netscape Public License, Mozilla Public License or BSD licenses; (ii) any license under which Software or other materials are distributed or licensed as “free software,” “open source software” or under similar terms; or (iii) any Reciprocal License, in each case whether or not Source Code is available or included in such license (“*Open Source*”), together with (A) information sufficient to identify the license applicable to each item of such Open Source, (B) information sufficient to describe which Company Product utilizes each such item of Open Source, and (C) where applicable, an indication of each such item of Open Source that has been modified by the Company or its Subsidiary or from which the Company or its Subsidiary have created a derivative work. Except as set forth in Section 2.14(e)(ii) of the Disclosure Schedule, no Software (including any modification or derivative work based upon any such Software) that has been licensed or made available to the Company or its Subsidiary under a Reciprocal License, in whole or in part: (i) is used in, incorporated into, combined with, linked with, distributed with, provided to any Person as a service, provided via a network as a service or application, or made available with any Company Product; (ii) is a Third Party Component of any Company Product; (iii) was modified by or on behalf of Company, rewritten by or on behalf of Company, or is otherwise a derivative work created by or on behalf of Company, where such modification or derivative work is embodied in or used in any Company Product; or (iv) is distributed or made available to any Person by the Company or its Subsidiary.

(f) All of the Company’s and its Subsidiary’s computer hardware, firmware, databases, software, systems, information technology infrastructure, and other similar or related items of automated, computerized and/or software systems and infrastructure used or relied upon by the Company or its Subsidiary in the operation of the Business (collectively, the “*Company IT Systems*”) are sufficient in all material respects for the needs of the Business as currently conducted (including both the Company’s and its Subsidiary’s internal operations and the provision of software and services to the Company’s customers). The Company and its

Subsidiary have business continuity and disaster recovery plans in place that are designed to minimize and mitigate the occurrence, duration and effect of any unscheduled unavailability of the hosting system. Except as set forth in Section 2.14(f) of the Disclosure Schedule, to the Knowledge of the Company, since January 1, 2008 there have been no successful unauthorized intrusions or breaches of the security of the Company IT Systems. Any residual deficiencies, vulnerabilities, or other issues arising out of any such intrusions or breaches disclosed in Section 2.14(f) of the Disclosure Schedule have been resolved.

(g) Except as set forth in Section 2.14(g) of the Disclosure Schedule, (i) none of the Source Code of any Company Software is subject to any Source Code escrow agreement, (ii) none of the Source Code of any Company Software has been released from escrow or otherwise disclosed to any third party other than Company's employees, independent contractors or consultants under binding written agreements that prohibit use or disclosure except in the performance of services for the Company, and (iii) no third party (other than Company's employees, independent contractors or consultants under binding written agreements that prohibit use or disclosure except in the performance of services for the Company) has or, to the Knowledge of the Company, has asserted, and no third party will have as a result of the consummation of the transactions contemplated by this Agreement, any right to access the same.

(h) Since January 1, 2008, the Company and its Subsidiary collect, use, disclose, process, store, protect, distribute, transmit, and dispose of, and have collected, used, disclosed, processed, stored, protected, distributed, transmitted, and disposed of, all protected health information, personally identifiable information and data, and financial or credit information and data of its personnel, customers, data licensors and data providers, in a manner that (i) complies with all applicable Legal Requirements, (ii) is in compliance with the Company's and its Subsidiary's own data privacy and information security policies, and (iii) is in compliance with all contractual obligations of the Company under any agreement with any Person with respect to any such data or information. Neither the Company, its Subsidiary nor, to the Knowledge of the Company, any of their respective service providers or contractors that has handled any such information or data on behalf of the Company has experienced or engaged in a breach in the security of such information or data or any misuse or unauthorized disclosure of such information or data that would require the provision of notice to any data subject or Governmental Body.

2.15 Insurance Coverage. Section 2.15 of the Disclosure Schedule contains a complete list of all insurance policies (including "self-insurance" programs but excluding any insurance policy related to any Company Employee Plan) currently maintained by the Company and its Subsidiary (collectively, the "***Insurance Policies***"), setting forth, in respect of each such Insurance Policy, the policy name, policy number, carrier, term, type, amount of coverage and annual premium. Each such Insurance Policy or a replacement policy of equal or greater coverage will be in full force and effect as of the Closing. All premiums are currently paid in accordance with the terms of each such Insurance Policy. Except as set forth in Section 2.15 of the Disclosure Schedule, neither the Company nor its Subsidiary is in default in any material respect under any such Insurance Policy and no claim for coverage under any Insurance Policy has been denied during the past two (2) years. Neither the Company nor its Subsidiary has received any written notice of cancellation or nonrenewal or intent to cancel or not renew with

respect to the Insurance Policies. The insurance maintained by the Company and its Subsidiary is customary for businesses of similar size engaged in similar lines of business.

2.16 Compliance with Legal Requirements; Permits.

(a) Except as set forth in Section 2.16(a) of the Disclosure Schedule, the Company and its Subsidiary are and at all times have been in compliance in all material respects with all Legal Requirements (which for the avoidance of doubt shall include the U.S. Bank Secrecy Act, USA Patriot Act of 2001, Foreign Corrupt Practices Act and the Customs and International Trade Laws) and Governmental Orders applicable to the Business or by which any property, asset or the business or operations of the Business is bound or affected and no written notices have been received by and no claims have been filed against the Company or its Subsidiary alleging a violation of any such Legal Requirements and Governmental Orders. Neither the Company nor its Subsidiary have ever certified, represented or otherwise indicated (either orally or in writing) to any Person, including any current, former or potential customer or Governmental Entity, that it is entitled to any preference due to any particular designation, including in respect of the ownership (e.g., minority-owned business) or size (e.g., small business) of the Company, its Subsidiary or otherwise. Neither the Company nor its Subsidiary have ever received, and they do not currently receive, any benefit of any kind from any designation, representation or classification with respect to the ownership, management or control of the Company or its Subsidiary.

(b) Except as set forth in Section 2.16(b) of the Disclosure Schedule, there are no material permits, licenses, membership privileges, authorizations, consents, approvals, waivers or franchises to be granted by or obtained from any Governmental Body ("**Permits**") that are required for the Company or its Subsidiary to operate the Business. The Company and its Subsidiary have, at all times, been and currently are in material compliance with such Permits, all of which are in full force and effect, and neither the Company nor its Subsidiary has received and is not aware of any circumstances that could result in the receipt of any notices (written or oral) to the contrary. None of such Permits will expire or terminate as a result of the Transactions, and each such Permit issued to or held by the Company or its Subsidiary will continue in full force and effect following the Closing without requiring the consents or approval of any Person.

2.17 Employee Benefit Plans.

(a) Except for the plans or arrangements listed on Section 2.17 of the Disclosure Schedule (hereinafter referred to collectively as the "**Company Employee Plans**" and individually as a "**Company Employee Plan**"), neither the Company, its Subsidiary nor one or more members of its Controlled Group, for the benefit of any current or former employee, officer, director or independent contractor of the Company or its Subsidiary, directly or indirectly, maintains, sponsors or has a material obligation or liability with respect to, any "employee benefit plan," as defined in Section 3(3) of ERISA, any collective bargaining agreement or union contract, or any incentive, bonus, severance, deferred compensation, stock purchase or other equity, educational assistance, retention, change in control, vacation, paid-time-off, retirement, or welfare plan policy, program, agreement or arrangement or any other material employment, compensation or benefit plan, program, policy, agreement or arrangement

(other than regular salary and wages). For the purposes of this Agreement, “**Controlled Group**” shall mean the Company, its Subsidiary and any corporation or trade or business, whether or not incorporated, which is treated together with the Company as a single employer under Section 4001(b)(1) of ERISA or Sections 414(b), (c), (m) or (o) of the Code.

(b) Each Company Employee Plan has been maintained, funded, operated, and administered in compliance, in all material respects, with its terms and any related documents or agreements and in compliance, in all material respects, with all applicable Legal Requirements; there are no actions, suits or claims pending (other than routine claims for benefits) or, to the Knowledge of the Company, threatened against such Company Employee Plan, the Company, or its Subsidiary or, to the Knowledge of the Company, against any fiduciary of such Company Employee Plan; there is no pending or, to the Knowledge of the Company, threatened proceeding involving any Company Employee Plan before the IRS, the United States Department of Labor or any other Governmental Body.

(c) No member of the Controlled Group, Company Employee Plan, or, to the Knowledge of the Company, any fiduciary or party in interest of such Company Employee Plan, has taken any action, or failed to take any action, which action or failure could subject the Company, its Subsidiary, or any respective employee thereof, to any material Liability for breach of any fiduciary duty, or for any prohibited transaction (as defined in Section 4975 of the Code), with respect to or in connection with such Company Employee Plan.

(d) Each Company Employee Plan intended to be qualified under Section 401(a) of the Code has heretofore been determined by the IRS to be so qualified, each trust created thereunder has heretofore been determined by the IRS to be exempt from Tax under the provisions of Section 501(a) of the Code; a copy of the most recent determination letter from the IRS (or an opinion letter issued to the prototype sponsor of the plan on which the Company is entitled to rely) regarding such qualified status for each such plan has been delivered to Parent, and to the Company’s Knowledge, no events have occurred that would reasonably be expected to adversely affect such qualified status.

(e) The Controlled Group does not maintain or contribute, has never maintained or contributed to or otherwise participated in and has no liability with respect to any (i) “defined benefit plan,” including within the meaning of Section 3(35) of ERISA or Section 414(j) of the Code, or a plan that is subject to the requirements of Section 412 of the Code or Title IV of ERISA, (ii) a “multiemployer plan” as described in Section 3(37) of ERISA or Section 414(f) of the Code; or (iii) a “multiple employer plan” as defined in ERISA or Code Section 413(c), or (iv) a “funded welfare plan” within the meaning of Section 419 of the Code.

(f) Each Company Employee Plan does not (i) provide for non terminable or non alterable benefits for employees, dependents or retirees or (ii) provide any benefits for any person upon or following retirement or termination of employment, except as otherwise required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code (herein collectively referred to as “**COBRA**”) or applicable Legal Requirements.

(g) Full and timely payment, in all material respects, has been made of all material amounts which the Controlled Group is required, under applicable Legal Requirements

or under any Company Employee Plan, to have paid as a contribution with respect to such Company Employee Plan.

(h) The Company has delivered to Parent with respect to each Company Employee Plan (i) all written documents comprising the material terms of such Company Employee Plan (including amendments and individual, trust or insurance agreements relating thereto); (ii) the three most recent Federal Form 5500 series (including all schedules thereto) filed with respect to each such Company Employee Plan; (iii) the summary plan description currently in effect and all material modifications thereto, if any, for each such Company Employee Plan; and (iv) written communications to employees to the extent the substance of any Company Employee Plan described therein differs materially from the other documentation furnished under this Section.

(i) The consummation of the Transactions will not accelerate the time of the payment or vesting of, or increase the amount of, or result in the forfeiture of compensation or benefits under any Company Employee Plan except as expressly provided in this Agreement.

(j) Each agreement, contract, plan, or other arrangement that constitutes a “nonqualified deferred compensation plan” subject to Section 409A of the Code to which the Company or its Subsidiary is a party, in all material respects complies with and has been maintained in accordance with the requirements of Section 409A of the Code and any Treasury Regulations or Internal Revenue Service guidance issued thereunder, and to the Knowledge of the Company no amount under any such agreement, contract, plan, or other arrangement is subject to or has been subject to the interest and additional tax set forth under Section 409A(a)(1)(B) of the Code.

(k) Neither the Company nor its Subsidiary have any obligation to reimburse or otherwise “gross-up” any Person for the interest or additional tax set forth under Section 409A of the Code or the excise tax under Section 4999 of the Code.

2.18 Employees. The Company and its Subsidiary are and at all times have been in compliance, in all material respects, with all Legal Requirements relating to employment, including, without limitation, provisions thereof relating to wages, hours, equal opportunity, fair labor standards, nondiscrimination, workers compensation, immigration and collective bargaining. The Company and its Subsidiary have properly classified each Person who has performed services for the Company or its Subsidiary as an employee or independent contractor and neither the Company nor its Subsidiary have any material Liability, including without limitation, with respect to wages, taxes, social security, workers compensation, benefit plans or otherwise, as a result of any failure to properly classify each such Person. Neither the Company nor its Subsidiary has ever been a party to or bound by any union or collective bargaining Contract or relationship, nor is any such Contract currently in effect or being negotiated by or on behalf of the Company or its Subsidiary. Neither the Company nor its Subsidiary have ever experienced any labor problem that was or is material to it, and there are no pending or, to the Company’s Knowledge, threatened strikes, work stoppages, walkouts or other material labor problems. To the Company’s Knowledge, there are no ongoing or threatened union organizing activities and no such activities have occurred within the past five (5) years. Within the past three (3) years, neither the Company nor its Subsidiary have implemented any layoffs or plant closures

that required notice under the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar or related Legal Requirement (collectively, the “***WARN Act***”). To the Company’s Knowledge, no officer, manager, or other key employee of the Company or its Subsidiary is subject to or bound by any confidentiality, non-competition, proprietary rights or other such agreement between such employee and any other Person that would materially restrict him or her in the performance of his or her employment duties to the Company or its Subsidiary, or that would materially restrict the Company or its Subsidiary from operating the Business.

2.19 Government Programs. No agreements, loans, funding arrangements or assistance programs are outstanding in favor of the Company or its Subsidiary from any Governmental Body.

2.20 Interested Party Transactions. Except as set forth on Section 2.20 of the Disclosure Schedule, no officer, director or employee of the Company or its Subsidiary nor any holder of Company Capital Stock (or, to the Company’s Knowledge, any Affiliate thereof or entity in which any of the foregoing has a material financial interest, directly or indirectly) (i) owns any property or right, whether tangible or intangible, which is used in the Business; (ii) has any claim or cause of action against the Company or its Subsidiary; (iii) owes any money to or is owed money from the Company or its Subsidiary; or (iv) is a party to any Contract or other arrangement, written or oral, with the Company or its Subsidiary. Section 2.20 of the Disclosure Schedule sets forth every business relationship (other than normal employment relationships) between the Company or its Subsidiary, on the one hand, and any officer, director or employee of the Company or any holder of Company Capital Stock (or, to the Company’s Knowledge, any Affiliate thereof or entity in which any of the foregoing has a material financial interest, directly or indirectly), on the other hand.

2.21 Environmental Matters. Except for matters which, individually or in the aggregate, would not have a Material Adverse Effect, the Company and its Subsidiary have at all times complied with and are in compliance with all Environmental Laws, including all permits, licenses and other authorizations that are required pursuant to Environmental Laws. Neither the Company nor its Subsidiary have received any notice, report or information regarding any actual or alleged violation of Environmental Laws or any Liability arising under Environmental Laws and neither the Company nor its Subsidiary is subject to any Legal Proceedings or Governmental Order pursuant to any Environmental Laws. Neither the Company, its Subsidiary nor their predecessors have treated, stored, disposed of, arranged for the disposal of, transported, handled, manufactured, distributed, exposed any Person to, or released any Hazardous Substance, or owned or operated any property or facility contaminated by any Hazardous Substance, so as to give rise to any Liabilities pursuant to any Environmental Laws. Except as may be set forth in the Leases, neither the Company nor its Subsidiary have assumed, undertaken, provided an indemnity with respect to, or otherwise become subject to, any Liability of any other Person relating to Environmental Laws. The Company has made available to Parent and Merger Sub all environmental audits, assessments, reports, and other material environmental documents that are in its possession, custody, or control and which relate to the Company, its Subsidiary or the Business.

2.22 Customers and Suppliers. Section 2.22 of the Disclosure Schedule lists the customers of the Company and its Subsidiary with annual revenue in excess of \$100,000, along

with the dollar amounts of the annual revenue generated from such customers, for each of the two most recent fiscal years and the trailing-twelve months ending on the date of the Most Recent Balance Sheet (the “**Material Customers**”). Section 2.22 of the Disclosure Schedule lists the ten (10) largest suppliers of the Company and its Subsidiary for each of the two most recent fiscal years and the trailing-twelve months ending on the date of the Most Recent Balance Sheet, as measured by the dollar amounts of purchases therefrom or thereby (the “**Material Suppliers**”). Except as set forth in Section 2.22 of the Disclosure Schedule, no Material Customer or Material Supplier has terminated its relationship with the Company or its Subsidiary, nor has the Company or its Subsidiary received notice that any Material Customer or Material Supplier intends to stop doing business with the Company or its Subsidiary or, to Knowledge of the Company, materially modify any of the terms (whether related to payment, price, quantity or otherwise) of its relationship in a materially adverse manner (whether as a result of the consummation of the transactions contemplated hereby or otherwise). To the Knowledge of the Company, each Material Customer and Material Supplier will continue to be a customer or supplier, as applicable, of the Company after the Closing.

2.23 Finders’ Fees. Except as disclosed on Section 2.23 of the Disclosure Schedule, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Company who might be entitled to any fee or commission from Parent, the Company, its Subsidiary or any of their respective Affiliates upon consummation of the Transactions.

2.24 Names and Locations; Officers and Bank Accounts.

(a) Except as disclosed on Section 2.24(a) of the Disclosure Schedule, (i) neither the Company nor its Subsidiary have used any name or names under which they have invoiced account debtors, maintained records concerning its assets or otherwise conducted business, other than the exact name set forth in its certificate of formation, and (ii) all of the material assets of the Company and its Subsidiary are located at the Real Property.

(b) Section 2.24(b) of the Disclosure Schedule lists all of the Company’s and its Subsidiary’s directors, officers, bank accounts, safety deposit boxes and lock boxes (designating each authorized signatory with respect thereto).

2.25 Payments under Agreement. The payments, amounts and calculations (i) set forth on the Payout Spreadsheet and (ii) payable to the Closing Date Payees as set forth on the Payout Spreadsheet, are true, correct and complete in all respects and are derived and accurately calculated from this Agreement and the Company Charter. Any amount paid or payable pursuant to this Agreement to an Effective Time Holder (including, without limitation, the calculation of the Aggregate Preferred Liquidation Preference) is consistent with applicable Legal Requirements and the terms of the Company Charter and the Company’s other governing documents in all respects and no Effective Time Holder is entitled to receive consideration other than as set forth on the Payout Spreadsheet.

2.26 No Other Representations. Absent fraud, other than to the extent set forth in this SECTION 2 (or any certificate related thereto) or the Disclosure Schedules, the Company makes no other representations or warranties, including in respect of predictive or forward looking

materials provided by management that are not included in the representations and warranties set forth in, or contemplated by, this Agreement, such certificate or the Disclosure Schedules.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby jointly and severally represent and warrant to the Company as of the date of this Agreement as follows:

3.1 Due Organization. Parent is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all necessary power and authority to conduct its business in the manner in which its business is currently being conducted and to own and use its assets in the manner in which its assets are currently owned and used. Merger Sub is a corporation duly organized, validly existing and in good standing under the Legal Requirements of the State of Delaware.

3.2 Authority; Binding Nature of Agreement. Parent and Merger Sub have the corporate power and authority to perform their obligations under this Agreement and the Transaction Documents to which Parent and Merger Sub are to be a party; and the execution, delivery and performance by Parent and Merger Sub of this Agreement and the Transaction Documents to which Parent and Merger Sub are to be a party have been duly authorized by all necessary action on the part of Parent and Merger Sub and their respective boards of directors. No vote of Parent's stockholders is needed to approve the Merger. This Agreement has been (and each Transaction Document to which Parent and Merger Sub are to be a party will be as of Closing) duly executed and delivered by Parent and Merger Sub, as applicable, and constitutes the legal, valid and binding obligation of Parent and Merger Sub, enforceable against them in accordance with its terms, subject to bankruptcy, reorganization, insolvency and other similar laws affecting the enforcement of creditors' rights in general and to general principles of equity (regardless of whether considered in a proceeding in equity or an action at law).

3.3 Finders' Fees. There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Parent or Merger Sub who might be entitled to any fee or commission from any Effective Time Holder (or, if the Closing does not occur, the Company) upon consummation of the Transactions.

3.4 No Other Representations. Absent fraud, other than to the extent set forth in this SECTION 3 (or any certificate related thereto), neither Parent nor Merger Sub makes any other representations or warranties, including in respect of predictive or forward looking materials provided by the officers, directors or employees of Parent or Merger Sub that are not included in the representations and warranties set forth in, or contemplated by, this Agreement or such certificate.

SECTION 4. COVENANTS

4.1 Conduct of Business Prior to the Closing. Between the date of this Agreement and the Closing Date, unless Parent shall otherwise agree in writing, the Company shall (and shall cause its Subsidiary to) conduct its business and operate only in the ordinary course of business consistent with prior practice in all material respects, and the Company shall, and shall

cause its Subsidiary to, use their respective commercially reasonable efforts to preserve intact in all material respects the Business. Without limiting the generality of the foregoing, between the date of this Agreement and the Closing Date, without the prior consent of Parent, the Company shall not (and the Company shall cause its Subsidiary not to):

(a) make any capital expenditure or capital commitment in excess of \$50,000 in any individual case or \$100,000 in the aggregate;

(b) amend or change the Company Charter or the Company's bylaws or the governing documents of the Company's Subsidiary;

(c) change its accounting methods, principles or practices;

(d) declare, set aside or pay any dividend or other distribution with respect to any shares of capital stock or other ownership interests or repurchase or redeem or commit to repurchase or redeem any shares of capital stock or other ownership interests other than in the ordinary course of business consistent with past practices or issue, sell or transfer any shares of Company Capital Stock or other ownership interests of the Company or its Subsidiary;

(e) (i) other than in the ordinary course of business consistent with past practice pay any material bonus to any Person, (ii) materially increase any salary, wages or other compensation for any director or officer or, other than in the ordinary course of business, any employee, or enter into new employment, severance, consulting, or other compensation arrangements with any of its existing employees, (iii) terminate the employment of any individual if such termination would trigger material obligations under any change of control or severance arrangement or (iv) institute any new employee welfare, bonus, stock option, profit-sharing, retirement or similar plan or arrangement with, any of its directors, officers or employees resulting in additional material Liability to the Company;

(f) implement any facility closings or mass layoffs that would implicate the WARN Act;

(g) merge into, consolidate with, or sell a substantial part of its assets to any other Person, make any acquisition of any capital stock or business of any other Person (whether by merger, stock or asset purchase or otherwise), or permit any other Person to be merged or consolidated with it;

(h) conduct its cash management customs and practices other than in the ordinary course of business (including with respect to collection of accounts receivable, repairs and maintenance, payment of accounts payable, accrued expenses or other Liabilities, levels of capital expenditures, pricing and credit practices and operation of cash management practices generally);

(i) delay or postpone the repair and maintenance of its properties or the payment of accounts payable, accrued liabilities or other obligations and Liabilities;

(j) make any write-off or write-down, or any determination to write-off or write-down, or revalue, any of its assets and properties (including notes or accounts receivables)

or change in any respect any reserves associated therewith, or waive or release any right or claim;

(k) incur or suffer any Indebtedness or incur or become subject to any other material Liability, except current Liabilities incurred in the ordinary course of business (none of which is a Liability for breach of Contract, tort, infringement, claim, lawsuit, warranty, or environmental, health or safety matter);

(l) make any loans or advances to, investments in, or guarantees for the benefit of, or otherwise became liable for the Indebtedness or other legal obligation of, any Person (other than advancements for expenses to employees in the ordinary course of business consistent with past practices);

(m) engage in any promotional sale or discount or other activity with customers that is intended to have or would reasonably be expected to have the effect of accelerating to pre-Closing periods accounts receivable that would otherwise be expected to occur in post-Closing periods;

(n) settle or compromise any Legal Proceeding or other dispute other than settlements or compromises for Legal Proceedings or other disputes where the amount paid in settlement or compromise does not exceed \$25,000 in any individual case or \$50,000 in the aggregate, for all such Legal Proceedings or other disputes;

(o) make or change any material Tax election, change any accounting methods, practices or periods, file any amended Tax Return, enter into any closing agreement with respect to Taxes, settle any Tax claim or assessment, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment;

(p) other than in the ordinary course of business consistent with past practice, enter into, amend or terminate any Material Contract or material Permit;

(q) other than in the ordinary course of business consistent with past practice, enter into, sell, lease, assign, transfer, abandon, permit to lapse or otherwise dispose of any material rights, assets or properties, tangible or intangible;

(r) cancel without fair consideration any debts or claims owing to or held by it;

(s) other than in the ordinary course of business consistent with past practice, become subject to any obligation that prohibits the Company or its Subsidiary from freely engaging in business anywhere in the world or that otherwise restricts any activities of the Company or its Subsidiary;

(t) other than in the ordinary course of business consistent with past practice, sell, assign, license, abandon, transfer, permit to lapse, or otherwise dispose of any Company Intellectual Property; or

- (u) agree or commit to do any of the foregoing.

4.2 Access. From the date hereof until the Closing Date, the Company shall (and shall cause its Subsidiary to) afford Parent and its Representatives reasonable access to the Representatives, properties, offices, files, Contracts, documents, plants and other facilities, books and records of the Company and its Subsidiary, and shall furnish to Parent, Parent's financing sources and their respective Representatives, with such financial, operating and other data and information concerning the assets, commitments, Contracts, and properties of the Company and its Subsidiary as Parent may reasonably request; provided, however, that any such access or furnishing of information shall be conducted at Parent's expense, under the supervision of the Company's and its Subsidiary's personnel and in such a manner as not unreasonably to interfere with the normal operations of the Business. Notwithstanding anything to the contrary in this Agreement, neither the Company nor its Subsidiary shall be required to disclose any information to Parent, Parent's financing sources or its Representatives if such disclosure would (i) jeopardize any attorney-client or other legal privilege, (ii) contravene any applicable Legal Requirements, or any confidentiality restriction contained in any Material Contract; provided, however, that the Company shall use commercially reasonable efforts to obtain a waiver of any such confidentiality obligations upon Parent's reasonable request.

4.3 Knowledge of Breach.

(a) The Company shall give prompt written notice to Parent if it has Knowledge of (a) any material variances or inaccuracies in any of its representations or warranties contained in SECTION 2, (b) any material breach of any covenant hereunder by the Company, the Stockholders' Representative or any Effective Time Holder, and (c) any other material development affecting the ability of the Company to consummate the Transactions. Delivery of any such notice shall not be deemed to amend or modify any of the representations and warranties of the Company set forth in this Agreement (or the Disclosure Schedules) for any purpose (including for the purposes of the indemnification provided for in SECTION 6 or determining whether the conditions to Closing set forth in Section 5.3 have been satisfied).

(b) If any event, condition, fact or circumstance that is required to be disclosed pursuant to Section 4.3(a) requires any change in the Disclosure Schedule, or if any such event, condition, fact or circumstance would require such a change assuming the Disclosure Schedule were dated as of the date of the occurrence, existence or discovery of such event, condition, fact or circumstance, then the Company shall deliver to Parent an update to the Disclosure Schedule specifying such change. Delivery of any such update is for compliance and informational purposes only and shall not be deemed to amend or modify any of the representations and warranties of the Company set forth in this Agreement (or the Disclosure Schedules) for any purpose (including for the purposes of the indemnification provided for in SECTION 6 or determining whether the conditions to Closing set forth in Section 5.3 have been satisfied).

4.4 Notification of Certain Matters. Until the Closing, each party hereto shall promptly notify the other parties in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event of which it is aware that will or is reasonably likely to

result in any of the conditions of the other parties set forth in SECTION 5 of this Agreement becoming incapable of being satisfied.

4.5 Preservation of Records. Parent shall, and shall cause the Surviving Corporation to, preserve and keep the Records held by them relating to the Business for a period of six (6) years from the Closing Date and shall make such records (or copies) and reasonably appropriate personnel available, at reasonable times and upon reasonable advance notice and for a reasonable and proper business purpose, to the Stockholders' Representative as may be reasonably required in connection with any Legal Proceedings or Tax audits; provided, that nothing herein shall require any party to disclose information to the other if such disclosure would waive any attorney-client privilege or contravene any Legal Requirement or would result in the disclosure of any trade secrets or other sensitive, competitive information; provided, further, that a reasonable purpose shall not include investigations of disputes under (or Legal Proceedings relating to) this Agreement or the Transaction Documents or investigations of breaches or alleged breaches of this Agreement or the Transaction Documents or based on the Transactions. Notwithstanding the foregoing, the Company shall not be required to violate any obligation of confidentiality to which it or any of its respective Affiliates is subject to discharging its obligations pursuant to this Section 4.5.

4.6 Cooperation. The parties hereto shall use their commercially reasonable efforts to cooperate with each other and to cause their respective Representatives to cooperate with each other following the Closing to ensure the orderly transition of the ownership of the Company and the Business to Parent and to minimize any disruption to the Business that might result from the Transactions.

4.7 Consents and Filings.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto shall use its respective commercially reasonable efforts promptly to take, or to cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other party in doing all things necessary, proper or advisable under applicable Legal Requirements to cause the conditions to Closing set forth in Section 5.2 (in the case of Parent and Merger Sub) and Section 5.3 (in the case of the Company and the Stockholders' Representative) to be satisfied in the most expeditious manner practicable, including, to (i) obtain from Governmental Bodies and other Persons all consents, approvals, authorizations, qualifications and orders as are necessary for the consummation of the transactions contemplated by this Agreement and the Transaction Documents and (ii) promptly make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement required under any applicable Legal Requirement.

(b) Each of the parties shall promptly notify the other parties of any communication it or any of its Affiliates receives from any Governmental Body relating to the matters that are the subject of this Agreement and permit the other parties to review in advance any proposed communication by such party to any Governmental Body. No party to this Agreement shall agree to participate in any meeting with any Governmental Body in respect of any filings, investigation or other inquiry unless it consults with the other parties in advance and, to the extent permitted by such Governmental Body, gives the other parties the opportunity to

attend and participate at such meeting. The parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other parties may reasonably request in connection with any such investigation or other inquiry. The parties will provide each other with copies of all correspondence, filings or communications between them or any of their Representatives, on the one hand, and any Governmental Body or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated hereby.

4.8 D&O Liability Insurance. Prior to the Closing, the Company shall have purchased and fully paid for a six (6) year run off (i.e., “tail”) policy or endorsement with respect to the current policy of directors’ and officers’ liability insurance covering claims asserted within six (6) years after the Closing arising from facts or events that occurred at or before the Closing (including consummation of the Transactions). Such policies or endorsements name as insureds thereunder all present and former directors and officers of the Company and the Surviving Corporation. From and for six (6) years following the Closing Date, the Surviving Corporation shall use commercially reasonable efforts to maintain such tail policy in full force and effect without amendment or modification thereof.

4.9 Public Announcements. No public release or public announcement concerning the Transactions shall be issued by any party hereto or any party to the Transaction Documents or such party’s Affiliates or Representatives (a) prior to the Closing, without the prior written consent of each of Parent and the Company (which consent shall not be unreasonably withheld, conditioned or delayed) or (b) following the Closing, without the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), except that, each party may make a public release or public announcement required by applicable Legal Requirements, provided the party required to make the release or announcement allows the other parties hereto reasonable time to comment on such release or announcement in advance of such issuance; *provided that*, at Closing, Parent and the Stockholders’ Representative shall work together to draft and issue a joint written press release announcing the Transactions.

4.10 Financing Cooperation. The Company shall use commercially reasonable efforts to, and shall use commercially reasonable efforts to cause its Subsidiary and its and their respective Representatives to, reasonably cooperate in connection with the financing arrangements of Parent as may be requested by Parent, including by (i) participating in a customary and reasonable number of meetings, due diligence sessions and sessions with prospective lenders, (ii) furnishing Parent and its lenders with available financial and other pertinent information regarding the Company and its Subsidiary, and (iii) taking reasonable corporate actions, subject to the occurrence of the Closing, necessary to permit the consummation of Parent’s financing; provided that (i) the Company shall not be required to pay any fee or other amount in connection with the foregoing and (ii) such assistance, cooperation and other actions shall not unreasonably interfere with the operations of the Business.

4.11 Exclusive Dealing.

(a) During the period from the date of this Agreement through the Closing Date or the termination of this Agreement pursuant to SECTION 7, the Company and the Stockholders’ Representative will not, and each will cause its respective Affiliates and its and

their respective officers, directors, employees, stockholders, Effective Time Holders, members, Representatives and Subsidiaries (collectively, the “**Company Parties**”) to not, directly or indirectly, pursue, solicit or initiate or enter into discussions, transactions or arrangements with, or encourage, cooperate with or provide any information to, any Person (other than Parent, and Merger Sub and/or their respective Representatives) concerning a sale, merger or acquisition (or possible sale, merger or acquisition) of all or any part of the Company or its Subsidiary, whether such transaction takes the form of a sale of stock, merger, acquisition, debt or equity investment, liquidation, dissolution, reorganization, recapitalization, consolidation, sale of assets (including all or a material portion of the assets or any interest associated with, comprising, or related to the Company or its Subsidiary) (any of the foregoing, however structured, an “**Acquisition Transaction**”) or provide any information to any other Person in connection therewith.

(b) The Company shall notify Parent in writing (including by electronic mail) promptly (but in no event later than 24 hours) after receipt by any of the Company Parties of any proposal or offer from any Person (other than Parent, Merger Sub and/or their respective Affiliates and its Representatives) to effect an Acquisition Transaction or any request for information relating to the Company in connection with a possible Acquisition Transaction or for access to the properties and Records of the Company or its Subsidiary in connection with a possible Acquisition Transaction by any Person (other than Parent, Merger Sub and/or their respective Affiliates, representatives, consultants, attorneys, accountants or other agents). Such notice shall indicate the identity of the Person making the proposal or offer, or requesting information or access to the Records of the Company or its Subsidiary, the material terms of any such proposal or offer, or modification or amendment to such proposal or offer, and copies of any written proposals or offers or amendments or supplements thereto. The Company and the Stockholders’ Representative shall keep Parent reasonably informed, on a current basis, of any material changes in the status and any material changes or modifications in the material terms of any such proposal, offer, indication or request.

(c) The Company shall (and shall cause the other Company Parties to) immediately cease and cause to be terminated any existing discussions or negotiations with any Person (other than Parent, Merger Sub and/or their respective Affiliates, representatives, consultants, attorneys, accountants or other agents) conducted heretofore with respect to any Acquisition Transaction.

4.12 Further Assurances. From and after the Closing Date, upon the request of either the Stockholders’ Representative or Parent, each of the parties hereto will do, execute, acknowledge and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or appropriate to carry out the transactions contemplated hereby.

4.13 Employee Matters.

(a) Following the Effective Time, Parent shall use commercially reasonable efforts to provide to each employee of Parent or the Surviving Corporation and their respective Subsidiaries who shall have been an employee of the Company or its Subsidiary immediately prior to the Effective Time (the “**Continuing Employees**”) full credit for prior service with the Company and its Subsidiary for purposes of (a) eligibility and vesting under any Parent

Employee Plans (as defined below), and (b) solely under any Parent Employee Plan which is a vacation, sick leave or other paid time off plan or arrangement, determination of benefit levels, in each case, for which the Continuing Employee is otherwise eligible and in which the Continuing Employee is offered participation, solely to the extent that such service is recognized by the Company and its Subsidiary under the comparable Company Employee Plan, but except where such credit would result in a duplication of benefits. In addition, Parent shall use commercially reasonable efforts to provide that any limitations on benefits relating to pre-existing conditions, waiting periods and insurability requirements shall be waived to the same extent such limitations are waived under any comparable plan of the Company and its Subsidiary before the Effective Time, and shall use its commercially reasonable efforts to recognize for purposes of annual deductible and out-of-pocket limits under Parent Employee Plans that are medical and dental plans, deductible and out-of-pocket expenses and copayments paid by Continuing Employees in the calendar year in which the Effective Time occurs, and Parent shall provide credit to Continuing Employees for unused paid time off in the form of vacation in accordance with Parent's and its Subsidiaries' policies. For purposes of this Agreement, the term "**Parent Employee Plan**" means any "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and any other employee benefit arrangement which is sponsored or maintained by Parent or any of its Subsidiaries (other than any equity-based arrangements) and which Parent, in its sole discretion, makes available to Continuing Employees. Nothing in this Agreement, express or implied, shall (i) limit or otherwise restrict Parent or the Surviving Corporation's ability to terminate any Continuing Employee at any time and for any reason, including without cause (ii) be deemed to confer upon any individual (or any beneficiary thereof) any rights under or with respect to any plan, program or arrangement described in or contemplated by this Section 4.13, and each individual (or beneficiary thereof) shall be entitled to look only to the express terms of any such plan, program, or arrangement for his or her rights thereunder, or (iii) be deemed to amend, modify or terminate or prevent the amendment, modification or termination of any Parent Employee Plan or other employee benefit plan, program or arrangement. Nothing contained in this Section 4.13, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement or create any third-party rights or any rights of any Person other than the parties to this Agreement.

(b) Prior to the Closing and effective as of at least one business day prior to the Closing Date, the Company's Board of Directors shall have approved the termination of the Avectra, Inc. 401(k) Plan.

SECTION 5. CONDITIONS TO CLOSING

5.1 General Conditions. The respective obligations of each of the Company, Parent and Merger Sub to consummate the Transactions shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any of which may, to the extent permitted by applicable Legal Requirement, be waived in writing by any of the Company, Parent and Merger Sub in its sole discretion (provided that such waiver shall only be effective as to the obligations of such Person):

(a) No Governmental Body shall have enacted, issued, promulgated, enforced or entered any Governmental Order (whether temporary, preliminary or permanent) that is then

in effect and that enjoins, restrains, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

(b) All consents of, or registrations, declarations or filings with, any Governmental Body legally required for the consummation of the transactions contemplated by this Agreement shall have been obtained or filed.

5.2 Conditions to the Obligations of the Company. The obligations of the Company to consummate the Transactions shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion:

(a) Each of the representations and warranties of Parent and Merger Sub contained in SECTION 3 of this Agreement (other than the Fundamental Representations) (a) that is qualified as to or by Material Adverse Effect or materiality shall be true and correct in all respects as of the date hereof and as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date)) and (b) that is not qualified as to or by Material Adverse Effect or materiality shall be true and correct in all material respects as of the date hereof and as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date)). Each of the Fundamental Representations of Parent and Merger Sub contained in SECTION 3 of this Agreement shall be true and correct in all respects as of the date hereof and as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date)).

(b) Each of the covenants and agreements of Parent and/or Merger Sub to be performed prior to the Closing shall have been performed in all material respects.

(c) The Company shall have received from each of Parent and Merger Sub a certificate, dated as of the Closing Date, to the effect of the foregoing clauses (a) and (b), signed by a duly authorized officer of each of Parent and Merger Sub.

(d) The Company shall have received an executed counterpart of the Escrow Agreement, signed by Parent and the Escrow Agent.

5.3 Conditions on the Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by Parent in its sole discretion:

(a) Each of the representations and warranties of the Company contained in SECTION 2 of this Agreement (other than the Fundamental Representations) (a) that is qualified as to or by Material Adverse Effect or materiality shall be true and correct in all respects as of the date hereof and as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date)) and (b) that is not qualified as to or by Material

Adverse Effect or materiality shall be true and correct in all material respects as of the date hereof and as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date). Each of the Fundamental Representations of the Company contained in SECTION 2 of this Agreement shall be true and correct in all respects as of the date hereof and as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date).

(b) Each of the covenants and agreements of the Company, the Stockholders' Representative and any Effective Time Holder to be performed as of or prior to the Closing shall have been performed in all material respects.

(c) There shall not have occurred any Material Adverse Effect since the date hereof.

(d) Parent shall have received from the Company (i) a certificate to the effect of the foregoing clauses (a), (b) and (c), signed by a duly authorized officer thereof.

(e) Parent shall have received a good standing or similar certificate of the Company and its Subsidiary from the Company's and its Subsidiary's jurisdiction of incorporation, as applicable, dated within ten (10) days prior to the Closing Date.

(f) Parent shall have received an executed counterpart of the Escrow Agreement and each of the other Transaction Documents to which it is a party, signed by each party other than Parent or Merger Sub.

(g) Parent shall have received a certificate from the Company for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3), together with evidence reasonably satisfactory to Parent that the Company will provide notice to the IRS in accordance with the provisions of Treasury Regulation Section 1.897-2(h).

(h) Parent shall have received customary pay-off letters from all holders of Company Debt to be repaid as of the Closing in form and substance satisfactory to Parent (the "**Payoff Letters**"), and evidence of the agreement to terminate all Liens on the assets or properties of the Company and its Subsidiary that are held by such holders (or any other Person), if any, executed by such holders (or such other Person).

(i) Parent shall have received final invoices and wire instructions for each of the applicable vendors to which Company Transaction Expenses relate (the "**Final Invoices**").

(j) Parent shall have received evidence of termination of agreements set forth on Section 5.3(j) of the Disclosure Schedule.

(k) Parent shall have received, by 7:30 a.m., Pacific Time on the date hereof, copies of the Stockholder Written Consents in the form of Exhibit G (the "**Stockholder Written Consents**") pursuant to which Effective Time Holders holding shares of

Company Capital Stock comprising at least ninety-five percent (95%) of the Company Capital Stock shall have voted in favor of the Merger.

(l) Parent shall have received Noncompetition Agreements (the “***Noncompetition Agreements***”), executed by each Person set forth on Section 5.3(l) of the Disclosure Schedule in the form mutually agreed to by Parent and each such Person.

(m) Parent shall have received Employment Agreements (the “***Employment Agreements***”), executed by each Person set forth on Section 5.3(m) of the Disclosure Schedule in the form mutually agreed to by Parent and each such Person.

(n) Parent shall have received Letters of Transmittal in the form of Exhibit H (the “***Letters of Transmittal***”) from Effective Time Holders holding shares of Company Capital Stock comprising at least ninety-five percent (95%) of the Company Capital Stock.

(o) Parent shall have received a resolution of the board of directors in form reasonably acceptable to Parent terminating the Company Option Plan.

(p) Parent shall have received copies of any consents and approvals identified on Section 5.3(p) of the Disclosure Schedule in a form reasonably acceptable to Parent.

(q) Parent shall have received letters of resignation from each of the Company’s and its Subsidiary’s directors and officers, other than those directors and officers who Parent informs the Company two days prior to the Closing Date need not resign.

(r) Parent shall have received such other documents and items that Parent may reasonably request in connection with the Transactions.

SECTION 6. INDEMNIFICATION, ETC.

6.1 Survival. The representations, warranties and covenants contained in this Agreement and in any other certificate delivered at the Closing pursuant to or in connection with this Agreement shall survive the Closing until the eighteen (18) month anniversary of the Closing (as may be extended pursuant to clauses (x), (y) and/or (z) or otherwise below) (the “***Cut-Off Date***”), provided that: (x) each Fundamental Representation shall survive indefinitely and there shall be no Cut-Off Date for any Claim arising out of, related to or as a result of any breach of any Fundamental Representation, (y) the representations and warranties set forth in Section 2.11 (Taxes) shall survive the Closing until sixty (60) days following the expiration of the applicable statute of limitations (including all extensions thereof), and (z) each covenant contained in this Agreement or in any other certificate delivered at the Closing pursuant to this Agreement shall survive indefinitely and there shall be no Cut-Off Date for any Claim arising out of, related to or as a result of any nonfulfillment or breach of any covenant. If any Claiming Party delivers to the Indemnifying Party a written Claim Notice on or prior to the applicable Cut-Off Date, then notwithstanding anything to the contrary herein, the Claim asserted in such Claim Notice (together with the underlying representations, warranties and/or covenants related or applicable thereto) shall survive the Cut-Off Date, solely with respect to such Claim, until at least such time as such Claim is fully and finally resolved. To the extent the survival periods of

the representations and warranties as set forth in this Section 6.1 are greater than or less than the survival period under the applicable statute of limitations, the parties expressly acknowledge and agree that the survival periods set forth in this Section 6.1 are intended to alter such applicable statutes of limitations.

6.2 Indemnification of the Parent Indemnitees. Subject to the terms contained in this SECTION 6, each of the Effective Time Holders, severally (and not jointly), pro rata and based upon each such Effective Time Holder's Indemnity Pro Rata Share (except to the extent paid from the Indemnity Escrow Amount, in which case such indemnity shall be joint and several), agrees to indemnify the Parent Indemnitees against and save and hold them harmless from, any and all Damages incurred, sustained or suffered by any Parent Indemnatee, arising out of, as a result of or in connection with, related to or by virtue of: (a) any breach or inaccuracy of any of the representations or warranties of the Company contained in this Agreement, the Disclosure Schedules or any other certificate furnished to Parent pursuant to this Agreement (other than representations and warranties in Section 2.11, which are addressed in Section 6.9(h)); (b) any nonfulfillment or breach of any covenant or agreement contained herein required to be performed by the Effective Time Holders or the Stockholders' Representative, provided, however, that in the case of indemnification for Damages pursuant to this Section 6.2(b) that arise out of or are in connection with an Effective Time Holder's individual nonfulfillment or breach of any covenant or agreement contained herein which is required to be performed by such Effective Time Holder, such Effective Time Holder shall individually indemnify the Parent Indemnitees against and save and hold them harmless from and against the full amount of such Damages, subject to the limitations set forth in Section 6.5(c); (c) any nonfulfillment or breach of any covenant or agreement contained herein required to be performed by the Company on or prior to the Closing Date; (d) any Company Debt to the extent not included as Company Debt in the calculation of Final Merger Consideration, any Company Change in Control Payments to the extent not included as Company Change in Control Payments in the calculation of Final Merger Consideration and/or any Company Transaction Expenses to the extent not included as Company Transaction Expenses in the calculation of Final Merger Consideration; (e) any claims by any holder of Company Capital Stock as a result of the exercise of such holder's appraisal rights (net of any amount that would otherwise have been payable to the holder of Company Capital Stock exercising any appraisal rights); (f) any claims arising out of the Payout Spreadsheet (including any inaccuracy thereof); (g) any claim by any current or former holder of Company Capital Stock, Company Options or Company Warrants arising out of, related to or by virtue of the Merger or the transactions contemplated hereby (other than pursuant to Section 6.3) or otherwise relating to or arising from periods prior to the Effective Time; (h) any breach of any agreement between the Company or its Subsidiary, on the one hand, and Microsoft Corporation ("**Microsoft**"), on the other hand; and (i) any claims of infringement, misappropriation or violation of Microsoft's Intellectual Property or Intellectual Property Rights by virtue of the Company's or its Subsidiary's licensing or use of any software developed, licensed, distributed, made available, maintained, or otherwise commercialized by Microsoft or its Affiliates.

6.3 Indemnification of the Effective Time Holders. Subject to the terms contained in this SECTION 6, Parent agrees to indemnify the Effective Time Holders against and hold them harmless from, any Damages incurred or suffered by any of them, arising out of or as a result of: (a) any breach of any of the representations or warranties of Parent or Merger Sub contained in this Agreement or any other certificate furnished to the Company by Parent or

Merger Sub under this Agreement; and (b) any nonfulfillment or breach of any covenant or agreement contained herein required to be performed by Parent or Merger Sub.

6.4 Procedure Relative to Indemnification.

(a) In the event that any Person shall claim that it is entitled to be indemnified, defended or held harmless pursuant to the terms of this SECTION 6 (each, a “**Claim**”), such Person (the “**Claiming Party**”) shall promptly notify the party or parties against which the Claim is made (the “**Indemnifying Party**”) (and the Stockholders’ Representative in the case where the Indemnifying Party is an Effective Date Holder) in writing (a “**Claim Notice**”) of such Claim promptly after the Claiming Party receives written notice of any Legal Proceeding or other claim against it (if by a third party) (a “**Third-Party Claim**”) that may reasonably be expected to result in a Claim by the Claiming Party against the Indemnifying Party; *provided*, that no delay on the part of the Claiming Party will relieve the Indemnifying Party from any Liability or Damages hereunder unless (and only to the extent) the delay in notice results in the Indemnifying Party being materially prejudiced.

(b) Except as provided in Section 6.9(i) with respect to any Third-Party Claim relating to a Tax matter, the following provisions shall apply to Claims of the Claiming Party which are based upon a Third-Party Claim (including any form of Legal Proceeding filed or instituted by any Governmental Body):

(i) The Indemnifying Party shall have the right, upon receipt of the Claim Notice and at its expense, to defend such Third-Party Claim so long as (i) the Indemnifying Party notifies the Claiming Party in writing and without qualification (or reservation of rights) within fifteen (15) days after the Claiming Party has given notice of the Third-Party Claim that the Indemnifying Party will indemnify the Claiming Party from and against the entirety of any Damages the Claiming Party (or its Affiliates or Representatives) may incur or suffer arising out of, as a result of or in connection with, related to or by virtue of any Third-Party Claim, (ii) the Third-Party Claim involves money damages and does not seek an injunction or other equitable relief that, if granted, would reasonably be expected to have a material impact on the Business, (iii) the Third Party Claim does not relate to or arise in connection with any criminal or quasi criminal proceeding, action, indictment, allegation or investigation, (iv) a court of competent jurisdiction has not determined that the Indemnifying Party has failed or is failing to prosecute or defend such claim, (v) no Claiming Party has been advised by counsel that a conflict of interest exists which, under applicable principles of legal ethics, would prohibit a single legal counsel from representing both the Claiming Party and the Indemnifying Party in such Third Party Claim and (vi) the Third-Party Claim is not made by (and does not otherwise involve) any of the Company’s material business relations. The Indemnifying Party shall have the right to settle and compromise such Third-Party Claim only with the consent of the Claiming Party (which consent shall not be unreasonably withheld or delayed). The controlling party will, upon request, keep the non-controlling party reasonably informed, in the defense of (and otherwise with respect to) any Third-Party Claim.

(ii) Subject to Section 6.4(b)(i) under circumstances where the Indemnifying Party does not elect to defend the Third-Party Claim, the Indemnifying Party shall also have the right within thirty (30) days from receipt of the Claim Notice to notify the

Claiming Party that the Indemnifying Party disputes the merits of the Third-Party Claim or that the Third-Party Claim is the subject of indemnification hereunder.

(iii) In the event the Indemnifying Party shall notify the Claiming Party that the Indemnifying Party does not wish to defend the Third-Party Claim or any of the conditions in the first sentence of Section 6.4(b)(i) is or becomes unsatisfied, then the Claiming Party shall have the right to conduct a defense against such Third-Party Claim and shall have the right to settle and compromise such Third-Party Claim if it acts in good faith upon ten (10) days' notice to, but without having to first obtain the consent of, the Indemnifying Party. Notwithstanding the foregoing, if any Third-Party Claim is settled or compromised without the consent of the Indemnifying Party, the amount of such settlement or compromise shall not be determinative of (or otherwise necessarily expand or limit) any Damages payable by the Indemnifying Party hereunder (it being acknowledged and agreed that either the Claiming Party or the Indemnifying Party may dispute the amount of such settlement or compromise as not being reflective or determinative of the amount of any Damages payable hereunder).

(c) Upon receipt of a Claim Notice that does not involve a Third-Party Claim, the Indemnifying Party shall have forty-five (45) days from the receipt of such Claim Notice to notify the Claiming Party that the Indemnifying Party disputes such Claim. If the Indemnifying Party does not timely notify the Claiming Party of such dispute, then the amount of such Claim shall be deemed, conclusively, a liability of the Indemnifying Party hereunder.

(d) For purposes of this SECTION 6, the Stockholders' Representative shall act (and receive notices, except for notices in connection with direct claims against an individual Effective Time Holder pursuant to Section 6.2(b)) on behalf of the Effective Time Holders.

6.5 Limits on Indemnification.

(a) **De Minimis Damages; Basket.** The Effective Time Holders shall not be obligated to indemnify any Parent Indemnitee with respect to any Damages from any Claim, pursuant to Section 6.2(a) if the amount of such Damages (when aggregated with any Damages arising out of, or out of Claims related to, the same or similar facts, events or circumstances) is less than \$12,500 (the "**De Minimis Damages**"); at which point, subject to the remainder of this paragraph, the Effective Time Holders will be obligated to indemnify the Parent Indemnitees for the entirety of Damages incurred, sustained or suffered (i.e., back to dollar one). Additionally, the Effective Time Holders shall not be obligated to indemnify any Parent Indemnitee with respect to any Damages from any Claim or Claims pursuant to Section 6.2(a), except to the extent that the aggregate Damages from all Claims exceed, in the aggregate, \$370,000 (the "**Basket Amount**"); at which point the Effective Time Holders will be obligated to indemnify the Parent Indemnitees from and against all such Damages in excess of \$370,000. Notwithstanding the foregoing, the Basket Amount and the De Minimis Damages limitation set forth in this Section 6.5(a) shall not apply to: (i) breaches or inaccuracies of any of the Fundamental Representations; (ii) breaches or inaccuracies of any representations and warranties set forth in Section 2.11 (Taxes); and (iii) for the avoidance of doubt, the matters referred to in Sections 6.2(b) through 6.2(i) or Section 6.9.

(b) **Liability Cap.** The aggregate maximum liability for Damages in respect of indemnification pursuant to Section 6.2(a) shall not exceed in the aggregate, \$3,700,000 (the “**Liability Cap**”); *provided*, that the Liability Cap set forth in this Section 6.5(b) shall not apply to (and such matters shall not apply towards the satisfaction of the Liability Cap): (i) breaches or inaccuracies of any of the Fundamental Representations; (ii) breaches or inaccuracies of any representations and warranties set forth in Section 2.11 (Taxes); and (iii) for the avoidance of doubt, the matters referred to in Sections 6.2(b) through 6.2(i) and Section 6.9.

(c) **Overall Liability Cap.** Notwithstanding anything to the contrary contained in this Agreement but subject to Section 6.10, in no event shall any individual Effective Time Holder’s liability for Damages pursuant to this SECTION 6 exceed, in the aggregate, such portion of the Merger Consideration actually received by such Effective Time Holder (the “**Overall Cap**”). The sum of any amounts paid from the Indemnity Escrow Amount to satisfy indemnifiable Damages shall be credited against and counted towards the Overall Cap.

(d) **Treatment of Insurance.** With respect to each Claim, any Damages that may be recovered by the Claiming Party with respect to such Claim shall be net of any insurance proceeds actually received by the Claiming Party with respect thereto (net of the out-of-pocket costs reasonably incurred of pursuing or obtaining such insurance proceeds, deductibles and any increased premium amounts attributable to such Claim). To the extent that insurance proceeds are actually collected by the Claiming Party after a Claim has been settled, the Claiming Party shall restore the Indemnifying Party to the same economic position as would have existed had such insurance proceeds been collected prior to the settlement of such Claim (net of the out-of-pocket costs reasonably incurred of pursuing or obtaining such insurance proceeds, deductibles and any increased premium amounts attributable to such Claim).

(e) **No Duplication of Recovery.** To the extent that any Damage resulting from any breach or inaccuracy of any representation or warranty under SECTION 2, is specifically taken into account as a deduction in the calculation of the Final Merger Consideration and actually received, to avoid a duplication of recovery, (A) no Parent Indemnitee may recover such Damage through a Claim pursuant to SECTION 6 or otherwise and (B) such Damage shall not be included in the determination of whether all Damages, in the aggregate, exceed the Basket Amount.

(f) **Duty to Mitigate.** Each party shall take all commercially reasonable steps to mitigate its respective Damages to the extent required by applicable Legal Requirements. Parent shall use commercially reasonable efforts not to intentionally notify Microsoft of any noncompliance that occurred prior to the Closing Date; provided, however, that nothing in the foregoing shall prevent Parent, Merger Sub or its and their successors, assigns or Representatives from, at any time, conducting licensing compliance activities in the ordinary course of business, which such activities shall include requesting quotations for additional licenses and any active or passive reporting of license usage.

(g) **Punitive Damages.** Notwithstanding anything to the contrary contained herein, subject to Section 6.10 below, “Damages” shall not include punitive damages unless paid to a third party.

6.6 Determination of Damages. For purposes of this SECTION 6, for determining the existence of, and calculating the amount of Damages resulting from, a breach or inaccuracy of a representation or warranty contained in this Agreement, the Disclosure Schedules or any other certificate furnished pursuant hereto (other than the representations in Section 2.9(h)), all qualifications as to “materiality” and “Material Adverse Effect” or words of similar import shall be disregarded and without effect (as if such standard or qualification were deleted from such representation or warranty).

6.7 Indemnification Payments.

(a) Except as otherwise provided herein, any indemnification of the Parent Indemnitees or the Effective Time Holders pursuant to this SECTION 6 shall be effected by wire transfer of immediately available funds from the Effective Time Holders or Parent, as the case may be, to an account(s) designated by Parent or the Stockholders’ Representative, as the case may be, within ten (10) days after the determination thereof; provided, however, that any amounts owing from any Effective Time Holder pursuant to Section 6.2 or Section 6.9(h), shall first be made to the extent possible from the remaining Indemnity Escrow Amount and thereafter shall be made directly against the Effective Time Holders (it being understood that, subject to the limitations herein, the Indemnity Escrow Amount shall not be the exclusive source of recovery).

(b) Without limiting the foregoing, in the event that the amount of indemnification payment owed to any Parent Indemnitee is greater than the remaining Indemnity Escrow Amount (such shortfall, the “***Additional Indemnification Amount***”), each Effective Time Holder, subject to Section 6.8, shall make payment by wire transfer in immediately available funds in amount equal to such Effective Time Holder’s Indemnity Pro Rata Share of the Additional Indemnification Amount to an account designated by Parent within ten (10) days after the determination thereof.

(c) All indemnification payments under this SECTION 6 shall be deemed adjustments to the Merger Consideration to which the Effective Time Holders are entitled hereunder.

6.8 Exclusive Remedies. Subject in all cases to Section 6.10, from and after the Effective Time, the sole and exclusive remedy of Parent, the Surviving Corporation, the Stockholders’ Representative and the Effective Time Holders (other than causes of action (i) seeking specific performance or injunctive relief or (ii) under any Transaction Document (other than this Agreement)) for any breaches or inaccuracies of representations, warranties and covenants and other indemnifiable matters contained in this Agreement will be to make a Claim pursuant to this SECTION 6. Nothing in this Section 6.8 or otherwise in this Agreement shall limit the rights of the parties to seek specific performance of the other parties’ obligations hereunder in accordance with Section 8.12 or any cause of action or right or remedy (whether for damages, specific performance or otherwise) pursuant to the terms of any other Transaction Document.

6.9 Tax Matters.

(a) In the case of any taxable period that includes (but does not end on) the Closing Date (a “**Straddle Period**”), the amount of any Taxes based on or measured by sale, payments, income, receipts, or payroll of the Company or its Subsidiary for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose, the taxable period of any partnership or other pass-through entity in which the Company or its Subsidiary holds a beneficial interest shall be deemed to terminate at such time) and the amount of other Taxes of the Company or its Subsidiary for a Straddle Period that relates to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

(b) All Tax-sharing agreements or similar agreements with respect to or involving the Company or its Subsidiary shall be terminated as of the Closing Date and, after the Closing Date, neither the Company nor its Subsidiary shall be bound thereby or have any Liability thereunder.

(c) All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement shall be borne half by the Effective Time Holders and half by Parent. Parent will file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by applicable Legal Requirements, the Effective Time Holders will join in the execution of any such Tax Returns and other documentation.

(d) Parent, Surviving Corporation and the Company, and the Stockholders’ Representative shall cooperate fully, as and to the extent reasonably requested by the other parties, in connection with the preparation and filing of Tax Returns pursuant to this Agreement and any audit, litigation or other proceeding with respect to Taxes, and allowing the Stockholder’s Representative to review Tax Returns to determine or verify the proper amounts payable (if any) pursuant to Section 6.9(j) and Section 6.9(k). Such cooperation shall include the retention and (upon another party’s request) the provision of records and information that are reasonably relevant to any such Tax Return preparation, audit, litigation or other proceeding or review and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Company, the Surviving Corporation, Parent and the Stockholder’s Representative agree (A) to retain all books and records with respect to Tax matters pertinent to the Surviving Corporation, the Company and its Subsidiary relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Parent or the Stockholder’s Representative, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority, and (B) to give the other parties reasonable written notice prior to transferring, destroying or discarding any such books and records and, if another party so requests, the Surviving Corporation, the Company or the Stockholder’s Representative, as the case may be, shall allow the other party to take possession of such books and records. The Company further agrees, upon request, to use its best efforts to obtain any certificate or other document from any Governmental Body or any other Person as

may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the Transactions).

(e) The Stockholder's Representative shall have the exclusive authority and obligation to prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns filed on or prior to the Closing Date for the Company and its Subsidiary. Such Tax Returns shall be prepared in a manner consistent with the past practices of the Company and its Subsidiary. Except as provided in the preceding sentences, Parent shall have the exclusive authority and obligation to prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the Company and its Subsidiary for Pre-Closing Tax Periods that are filed after the Closing Date; provided, however, that (i) such Tax Returns shall be prepared in a manner consistent with the past practices of the Company and its Subsidiary, except as required by applicable Legal Requirements and (ii) with respect to any Tax Return to be filed by Parent for any Pre-Closing Tax Period, Parent shall provide the Stockholder's Representative with the opportunity to review and comment on such Tax Returns (and Parent shall consider in good faith and implement the reasonable comments of the Stockholder's Representative to such Tax Returns, to the extent such comments are consistent with the Company's and its Subsidiary's past practice and applicable Legal Requirements) and consent to the filing of such Tax Returns (which consent shall not be unreasonably withheld, conditioned or delayed).

(f) Without duplication of the provisions of Section 6.9(j), any cash Tax refunds that are received by Parent and/or the Surviving Corporation, and any credit claimed in lieu of a cash Tax refund, to which Parent or the Surviving Corporation become entitled, that relate to a Pre-Closing Tax Period (including, for avoidance of doubt, any refund or credit claimed in lieu of a cash Tax refund resulting from a Tax Return or claim for refund or carryback filed pursuant to Section 6.9(j)) shall be for the account of the Effective Time Holders, and Parent shall pay over to the Stockholders' Representative any such refund or the amount of any such credit within 15 days after receipt or entitlement thereto; *provided* that payments to the Stockholders' Representative under this Section 6.9(f) shall be net of (1) any reasonable out-of-pocket costs associated in obtaining such refund of Taxes, (2) any Tax required to be withheld on such payment, and (3) any Taxes actually imposed on Parent and/or the Surviving Corporation as a result of such refunds. If there is a subsequent reduction by a Governmental Body (or by virtue of a change in applicable Tax law), of any amounts with respect to which a payment has been made to the Stockholders' Representative by Parent pursuant to this Section 6.9(f), then the Effective Time Holders shall pay Parent, pro rata based upon the actual amount received by each such Effective Time Holder of such Tax refund that is subsequently reduced, an amount equal to such reduction plus any interest or penalties imposed by a Taxing Authority with respect to such reduction. Notwithstanding anything to the contrary in this Section 6.9(f), Parent shall be entitled to any Tax refund or credit arising as a result of the carryback of a Tax attribute from a taxable period (or portion thereof) beginning after the Closing Date to a Pre-Closing Tax Period; provided that (1) such Tax attribute is carried back to such a Pre-Closing Tax Period only after the full application of Section 6.9(j) and (ii) the Effective Time Holders shall not have any liability under Section 6.9(h) that is attributable (in the reasonable determination of the Stockholder's Representative and Parent) to any such carryback, including by reason of an extension of the statute of limitations with respect to such Pre-Closing Tax Period solely as a result of such carryback.

(g) The Company agrees to submit any and all accelerated vesting payments, benefits, options, stock and/or any other payment provided pursuant to agreements, contracts or arrangements that might otherwise result, separately or in the aggregate, in the payment of any amount and/or the provision of any benefit that would not be deductible by reason of Section 280G of the Code to a stockholder vote in accordance with Section 280G(b)(5)(B) of the Code upon receipt of a valid waiver of such payments or benefits by each of the affected “disqualified individuals”, with such stockholder vote to be obtained in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the regulations promulgated thereunder (the “**280G Approval**”). The Company shall use commercially reasonable efforts to obtain the waivers described in the preceding sentence. The Company shall deliver to Parent, prior to seeking the 280G Approval, drafts of any documents required to be provided or executed with respect to the 280G Approval, including any waivers, consents, disclosures, and any related analysis (the “**280G Approval Documents**”), for Parent’s review, comment and approval (which shall not be unreasonably withheld, conditioned or delayed), in order to ensure Parent is reasonably satisfied that the 280G Approval will be solicited in accordance with Section 280G(b)(5)(B) of the Code and Treasury Regulations Section 1.280G-1. To the extent that the 280G Approval is sought but not obtained with respect to any such payments or benefits, the Company shall not pay any such payments or benefits.

(h) Each of the Effective Time Holders, severally (and not jointly), pro rata based upon each such Effective Time Holder’s Indemnity Pro Rata Share, agrees to indemnify the Parent Indemnitees against and save and hold them harmless from, any and all Damages incurred, sustained or suffered by any Parent Indemnitee, arising out of, as a result of or in connection with, related to or by virtue of (i) any breach or inaccuracy of any of the representations or warranties of the Company contained in Section 2.11 and Section 2.17(j), and (ii) Indemnified Taxes. Notwithstanding anything in the Agreement to the contrary, the liability of the Effective Time Holders under this Section 6.9(h) shall not be subject to any of the limitations set forth in Section 6.5(a) or (b).

(i) (1) Parent shall promptly notify the Stockholders’ Representative upon receipt by Parent or any Affiliate of Parent (including the Surviving Corporation and the Subsidiary) of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes (any such inquiry, claim, assessment, audit or similar event, a “**Tax Matter**”) for which the Effective Time Holders may be liable under this Agreement. The Stockholder’s Representative, at its sole expense, shall have the authority to elect in writing, within ten (10) days of receiving Parent’s notice pursuant to Section 6.9(i)(1) to represent the interests of the Company and its Subsidiary with respect to any Tax Matter for a Pre-Closing Tax Period before the IRS or any Taxing Authority, any other governmental agency or authority or any court or other governmental body if such Tax Matter is solely with respect to a Pre-Closing Tax Period (“**Representative Tax Matter**”). Parent shall have the right to participate in any Representative Tax Matter. The Stockholder’s Representative shall have the right to control the defense, compromise or other resolution of such Representative Tax Matter, including responding to inquiries, and contesting, defending against and resolving any assessment for additional Taxes or notice of tax deficiency or other adjustment of Taxes of, or relating to, any Representative Tax Matter; provided, however, that the Stockholder’s Representative shall not enter into any settlement of or otherwise compromise any such Representative Tax Matter without the prior written consent of Parent, which consent shall not be unreasonably withheld, conditioned or

delayed. The Stockholder's Representative shall keep Parent informed with respect to the commencement, status and nature of any such Tax Matter.

(2) Except as otherwise provided in clause (1) of this Section 6.9(i), or if the Stockholder's Representative does not elect to control a proceeding pursuant to clause (1) of this Section 6.9(i), Parent shall have the sole right, at its expense, to control any Tax Matter that is not a Representative Tax Matter, including, for the avoidance of doubt, any Tax Matter involving a Straddle Period; provided, that, (x) the Stockholder's Representative shall have the right, at its expense, to participate in any such Tax Matter to the extent such Tax Matter is partially with respect to a Pre-Closing Tax Period; and (y) neither Parent nor any of its Affiliates, shall enter into any settlement or otherwise compromise any Tax Matter for which the Effective Time Holders may have any liability under this Agreement without the prior written consent of the Stockholder's Representative, which shall not be unreasonably withheld, conditioned or delayed.

(j) Parent and the Stockholder's Representative agree that, as a result of the Merger, the taxable year of the Company and the Subsidiary shall end as of the close of business on the Closing Date for U.S. federal income tax purposes and that, to the extent permitted by applicable Legal Requirements, the Transaction Tax Deductions that accrue for U.S. federal income tax purposes on the Closing Date shall be includable in the U.S. federal income tax return filed by the Company for the taxable year ending on the Closing Date. Parent and the Stockholder's Representative further agree that, to the extent permitted by applicable Legal Requirements, the "next day rule" of Treasury Regulation Section 1.1502-76(b)(1)(ii)(B) has no application with respect to any such Transaction Tax Deductions. To the extent that the Transaction Tax Deductions result in (x) the ability of the Company to obtain a refund of Taxes paid for any Pre-Closing Tax Period (including a refund of estimated Taxes paid by the Company in any such period), or (y) a net operating loss for the taxable period ending on the Closing Date, then, upon a written request from the Stockholder's Representative, Parent will, as soon as is reasonably practicable, at the Effective Time Holders' expense, and to the extent allowed by applicable Legal Requirements, cause the Surviving Corporation to amend any Tax Return filed, file or cause to be filed a claim for a refund of any Taxes paid with respect to any Pre-Closing Tax Period, or file an amended Tax Return or IRS Form 1139 (and any corresponding state tax forms, if applicable) to obtain a refund or carryback such net operating loss to one or more prior taxable years of the Company.

(k) The Effective Time Holders shall be entitled to the value of any Transaction Tax Benefits realized on or prior to the earlier of (1) the third (3rd) anniversary of the Closing Date or (2) a Sale of the Company. For purposes of this Section 6.9(k), "**Transaction Tax Benefit**" means any reduction in the cumulative Tax liability of Parent, the Company or its Subsidiary for a taxable period that ends after the Closing Date resulting from the utilization or carryforward of a Transaction Tax Deduction in or to such taxable period (it being understood that the provisions of Section 6.9(j) shall be applied first to determine the amount of any Transaction Tax Deductions that are available to be used in such taxable period); provided, however, (1) with respect to the portion of the taxable period that includes the third (3rd) anniversary of the Closing Date, such taxable period shall be deemed to end on the third (3rd) anniversary of the Closing Date (and for such purposes, the Transaction Tax Benefit for such period shall be determined based on an interim closing of the books as of the third (3rd) anniversary of the Closing Date) and (2) the Transaction Tax Benefit amount shall be calculated

based on a complete taxable period of Parent, the Company or its Subsidiary, and not when estimated Tax payments are paid. A Transaction Tax Benefit shall be deemed to be realized in a taxable period if, and to the extent that, the cumulative liability of Parent, the Company or its Subsidiary for Taxes for such taxable period, calculated by excluding the relevant Transaction Tax Deduction, exceeds the actual liability for Taxes of Parent, the Company or its Subsidiary for such taxable period, calculated by taking into account the relevant Transaction Tax Deduction. Parent shall pay to the Effective Time Holders the amount of any Transaction Tax Benefit (net of any Taxes and reasonable out-of-pockets costs associated in obtaining such Transaction Tax Benefit) realized within 15 days after the date the Transaction Tax Benefit is realized. If there is a subsequent reduction by a Governmental Body (or by virtue of a change in applicable Tax Legal Requirement), of any amounts with respect to which a payment has been made to the Effective Time Holders by Parent pursuant to this Section 6.9(j), then the Effective Time Holders shall pay Parent, pro rata based upon the actual amount received by each such Effective Time Holder of such Transaction Tax Benefit that is subsequently reduced, an amount equal to such reduction plus any interest or penalties imposed by a Taxing Authority with respect to such reduction.

(l) Parent shall not make an election under Section 338 of the Code with respect to the transactions described in this Agreement.

6.10 Special Rule for Fraud and Intentional Misrepresentation. Notwithstanding anything in this Agreement or any other Transaction Document to the contrary, in no event shall any limit or restriction on any rights or remedies set forth in this Agreement limit or restrict the rights or remedies of (i) any Parent Indemnitee for fraud or intentional misrepresentation by the Company or any Effective Time Holder (or any Affiliate or Representative of such Person) or (ii) any Effective Time Holder for fraud or intentional misrepresentation by Parent or Merger Sub.

6.11 Distributions of Indemnity Escrow Amount. Distributions of any remaining portion of the Indemnity Escrow Amount shall be made pursuant to the applicable provisions of the Escrow Agreement. Any amount distributable to the Effective Time Holders in accordance with this Section 6.11 shall be released or disbursed to the Effective Time Holders based on each such Effective Time Holder's Adjustment Pro Rata Share.

SECTION 7. TERMINATION

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

- (a) by mutual written consent of Parent and the Company;
- (b) by the Company, if Parent or Merger Sub breaches or fails to perform in any respect any of their representations, warranties or covenants contained in this Agreement and such breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 5.2, and (ii) cannot be or has not been cured within 15 days following delivery of written notice of such breach or failure to perform;

(c) by Parent, if the Company breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 5.3, and (ii) cannot be or has not been cured within 15 days following delivery of written notice of such breach or failure to perform;

(d) by either the Company or Parent if the Merger shall not have been consummated by 11:59 p.m., Pacific Time, on the date hereof (the “**Termination Date**”); provided, that the right to terminate this Agreement under this Section 7.1(d) shall not be available if the failure of the party so requesting termination to fulfill any obligation under this Agreement shall have been the cause of the failure of the Merger to be consummated on or prior to such date;

(e) by Parent if the Stockholder Written Consents, duly executed by Effective Time Holders who beneficially own a number of shares of Company Capital Stock sufficient for obtaining the requisite company vote to approve the Merger (determined in accordance with the Company Charter and the DGCL) and comprising at least ninety-five percent (95%) of the Company Capital Stock, shall not have been delivered to Parent by 1:00 p.m., Pacific Time, on the date hereof; or

(f) by either the Company or Parent in the event that any Governmental Body shall have issued an Order or taken any other action restraining, enjoining or otherwise prohibiting the Transactions and such Order or other action shall have become final and nonappealable; provided, that the party so requesting termination shall have complied with Section 4.9.

7.2 Notice of Termination. The party seeking to terminate this Agreement pursuant to Section 7.1 (other than Section 7.1(a)) shall give prompt written notice of such termination to the other parties.

7.3 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability on the part of any party except (a) for the provisions of Section 2.23 and Section 3.3 relating to broker’s fees and finder’s fees, Section 4.9 relating to public announcements, Section 8.4 relating to fees and expenses, Section 8.5 relating to notices, Section 8.14 relating to third-party beneficiaries, Section 8.9 relating to governing law, Section 8.10 relating to submission jurisdiction and this Section 7.3 and (b) that nothing herein shall relieve any party from liability for any breach of this Agreement or any agreement made as of the date hereof or subsequent thereto pursuant to this Agreement or fraud.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1 Stockholders’ Representative.

(a) **Appointment.** By virtue of the adoption of this Agreement by the holders of the Company Capital Stock, and further by execution of a Letter of Transmittal, and without further action by any such holder of Company Capital Stock, the Effective Time Holders irrevocably nominate, constitute and appoint Avectra Shareholder Rep LLC as the Stockholders’

Representative (and by execution of this Agreement he or she hereby accepts such appointment) as the agent and true and lawful attorney in fact of the Effective Time Holders, with full power of substitution, to act in the name, place and stead of the Effective Time Holders for purposes of executing any documents and taking any actions that the Stockholders' Representative may, in its sole discretion, determine to be necessary, desirable or appropriate under this Agreement and the Escrow Agreement, including the exercise of power in connection with any claim for indemnification, compensation or reimbursement under SECTION 6 or an adjustment to the Merger Consideration under Section 1.11.

(b) **Authority.** The Effective Time Holders grant to the Stockholders' Representative full authority to execute, deliver, acknowledge, certify and file on behalf of the Effective Time Holders (in the name of any or all of the Effective Time Holders or otherwise) any and all documents that the Stockholders' Representative may, in its sole discretion, determine to be necessary, desirable or appropriate, in such forms and containing such provisions as the Stockholders' Representative may, in its sole discretion, determine to be appropriate, in performing his duties as contemplated by Section 8.1(a). Further, the Stockholders' Agent shall have the authority and discretion to make disbursements of the Reserve Amount from the Reserve Account provided it is acting in good faith. Notwithstanding anything to the contrary contained in this Agreement or in any other agreement executed in connection with the transactions contemplated hereby: (i) each Parent Indemnitee shall be entitled to deal exclusively with the Stockholders' Representative on all matters relating to any claim for indemnification, compensation or reimbursement under SECTION 6 or an adjustment to the Merger Consideration under Section 1.11; and (ii) each Parent Indemnitee and the Escrow Agent shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Effective Time Holder by the Stockholders' Representative, and on any other action taken or purported to be taken on behalf of any Effective Time Holder by the Stockholders' Representative, as fully binding upon such Effective Time Holder. Without limiting Parent and the Company's ability to rely on the actions and authority of the Stockholders' Representative, prior to entering into any amendment of this Agreement which materially and adversely affects the Effective Time Holders, as between the Effective Time Holders and the Stockholders' Representative, the Stockholders' Representative agrees to obtain the consent of the Effective Time Holders so materially and adversely affected.

(c) **Power of Attorney.** The Effective Time Holders recognize and intend that the power of attorney granted in Section 8.1(a): (i) is coupled with an interest and is irrevocable; (ii) may be delegated by the Stockholders' Representative; and (iii) shall survive the death or incapacity of any Effective Time Holder.

(d) **Replacement.** If the Stockholders' Representative shall die, resign, become disabled or otherwise be unable to fulfill his responsibilities hereunder, the Effective Time Holders shall (by consent of those Persons entitled to at least a majority of the Merger Consideration), within 30 days after such death, disability or inability, appoint a successor to the Stockholders' Representative (who shall be reasonably satisfactory to Parent) and immediately thereafter notify Parent of the identity of such successor. Any such successor shall succeed the Stockholders' Representative as the "Stockholders' Representative" hereunder. If for any reason there is no Stockholders' Representative at any time, all references herein to the Stockholders' Representative shall be deemed to refer to the Effective Time Holders.

(e) **Exculpation.** The Stockholders' Representative shall not be liable to any Effective Time Holder for any act done or omitted hereunder as Stockholders' Representative while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. The Effective Time Holders shall jointly and severally indemnify the Stockholders' Representative and hold him harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Stockholders' Representative and arising out of or in connection with the acceptance or administration of his duties hereunder.

(f) **Payments.** Any payment made to or at the request or instruction of the Stockholder's Representative on behalf of any Effective Time Holder pursuant to this Agreement and the transactions contemplated hereby shall be deemed to have been directly paid to or by such Effective Time Holder, as applicable, and any payment obligations hereunder shall be satisfied in full upon receipt by the Stockholders' Representative of notice from the applicable payor hereunder that payment was made pursuant to the Stockholders' Representative's instruction.

8.2 Amendment. This Agreement may be amended prior to Closing only by an instrument in writing signed by each of Parent and the Company. This Agreement may be amended after Closing only by an instrument in writing signed by each of Parent, the Surviving Corporation and the Stockholders' Representative. For the avoidance of doubt, the Joinders will be effective upon execution of Parent and the applicable Effective Time Holder (and will not need to be executed by the Company or the Stockholders' Representative).

8.3 Extension; Waiver.

(a) At any time prior to the Effective Time, and subject to the further provisions of this Section 8.3, the parties may (i) extend the time for the performance of any of the obligations or other acts of the other parties, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the agreements or conditions contained herein; *provided, however*, that after the Stockholder Written Consents have been obtained, no waiver shall be made that by applicable Legal Requirement requires further approval of the stockholders of the Company without the further approval of such stockholders.

(b) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

(c) No failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

8.4 Fees and Expenses. Each party will pay its own expenses (including attorneys', investment bankers' and accountants' fees and expenses) in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the Transactions (whether consummated or not). The Company shall be responsible for the professional fees and expenses incurred by the Company to the extent unpaid as of the Effective Time in connection with this Agreement and the transactions contemplated hereby (and all such Company Transaction Expenses shall be deducted from the amount otherwise payable as the Merger Consideration under this Agreement).

8.5 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered or sent via email (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three calendar days following mailing by certified or registered mail, postage prepaid and return receipt requested to the address or email address set forth beneath the name of such party below (or to such other address or email address as such party shall have specified in a written notice given to the other parties hereto):

if to Parent or Merger Sub:

Abila, Inc.
10800 Pecan Park Blvd., Suite 400
Austin, TX 78750
Facsimile: (512) 879-6902
Attention: Krista Endsley
Email: krista.endsley@abila.com

and

AKKR Management Company, LLC
2500 Sand Hill Road, Suite 300
Menlo Park, CA 94025
Facsimile: (650) 289-2461
Attention: Thomas Barnds
Dean Jacobson
Email: tom@accel-kkr.com
dean@accel-kkr.com

with copies (which shall not constitute notice) to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Facsimile: (312) 862-2200
Attention: Jeffrey J. Seifman, P.C.
Shelly M. Hirschtritt, P.C.

Email: jeffrey.seifman@kirkland.com
shelly.hirschtritt@kirkland.com

if to the Company:

Avectra, Inc.
7901 Jones Branch Drive, Suite 500
McLean, VA 22102
Facsimile: (703) 506-7001
Attention: Chief Executive Officer

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

Cooley LLP
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA 20190-5656
Facsimile: (703) 456-8100
Attention: Michael Lincoln, Andy Lustig and Aaron
Binstock
Email: mlincoln@cooley.com / alustig@cooley.com /
abinstock@cooley.com

if to the Stockholders' Representative:

Avectra Shareholder Rep LLC
c/o Sterling Partners
Attn: Daniel Hosler
401 N. Michigan Suite 3300
Chicago, IL 60611

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

Cooley LLP
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA 20190-5656
Facsimile: (703) 456-8100
Attention: Michael Lincoln, Andy Lustig and Aaron
Binstock
Email: mlincoln@cooley.com / alustig@cooley.com /
abinstock@cooley.com

8.6 Time of the Essence. Time is of the essence of this Agreement.

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

8.8 Counterparts. Electronic transmission in portable document format (.pdf) of any signed original document or retransmission of any signed electronic transmission in portable document format will be deemed the same as delivery of an original. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

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

8.10 Submission to Jurisdiction. Each of the parties irrevocably agrees that any Legal Proceeding arising out of or relating to this Agreement brought by any other party or its successors or assigns shall be brought and determined in any state or federal court sitting in the Wilmington, Delaware, and each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any Legal Proceeding relating thereto except in the courts described above, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the Transactions, (a) any claim that it is not personally subject to the jurisdiction of the courts as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

8.11 Successors and Assigns. This Agreement shall be binding upon: the Company and its successors and assigns (if any); Parent and its successors and assigns (if any); and Merger Sub and its successors and assigns (if any). This Agreement shall inure to the benefit of the parties, and the respective successors and assigns (if any) of the foregoing. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned (including by operation of law) without the prior written consent of (i) prior to the Closing, Parent and the Company and (ii) from and after the Closing, Parent and Stockholders' Representative. Notwithstanding the foregoing, from and after the Closing, Parent and the Company shall be permitted to (1) assign its rights and obligations under this Agreement and any of the provisions hereof to (A) an Affiliate of Parent or the Company and (B) any purchaser of all or substantially all of the equity or assets of Parent or the Company (or other purchase of all or any portion of

Parent, the Company or their respective businesses or (2) make a collateral assignment to any lender (or an agent thereof), of Parent or the Company for security purposes.

8.12 Remedies Cumulative; Specific Performance. The rights and remedies of the parties hereto shall be cumulative (and not alternative). The parties to this Agreement agree that, in the event of any breach or threatened breach by any party to this Agreement of any covenant, obligation or other provision set forth in this Agreement for the benefit of any other party to this Agreement, such other party shall be entitled (in addition to any other remedy that may be available to it) to: (a) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision, and (b) an injunction restraining such breach or threatened breach.

8.13 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

8.14 Parties in Interest. Except for payment of the Merger Consideration to the Effective Time Holders pursuant to the provisions of Sections 1.10(b)(vi), 1.11, 1.13, 4.8 and SECTION 6, none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties hereto and their respective successors and assigns (if any).

8.15 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement. The parties hereto are sophisticated and have been represented by attorneys throughout the transactions contemplated hereby who have carefully negotiated the provisions hereof. As a consequence, the parties do not intend that the presumptions of any applicable Legal Requirement or rules relating to the interpretation of contracts against the drafter of any particular clause should be applied to this Agreement or any Transaction Document, and therefore waive their effects. The parties agree that prior drafts of

this Agreement and the Transaction Documents will not be deemed to provide any evidence as to the meaning of any provision hereof or the intent of the parties with respect hereto and that such drafts will be deemed to be the joint work product of the parties.

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

(d) Except as otherwise indicated, all references in this Agreement to “*Sections*” and “*Exhibits*” are intended to refer to Sections of this Agreement and Exhibits to this Agreement. The Disclosure Schedule is hereby incorporated by reference and shall be deemed and construed as part of this Agreement for all purposes.

8.16 Entire Agreement. This Agreement and the other agreements referred to herein set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof.

8.17 Electronic Delivery. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a facsimile machine or electronic mail (any such delivery, an “*Electronic Delivery*”), will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument will raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

[Remainder of Page Intentionally Left Blank]

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

ABILA, INC.

By: _____
Name:
Title:

ABILA MERGER SUB CORP.

By: _____
Name:
Title:

AVECTRA, INC.

By: _____
Name:
Title:

**AVECTRA SHAREHOLDER REP LLC, in its capacity
as the Stockholders' Representative**

By: _____
Name:
Title:

Signature page to Merger Agreement

Exhibit A

CERTAIN DEFINITIONS

For purposes of the Agreement (including this **Exhibit A**):

“Additional Merger Consideration” shall mean, as of any date of determination, without duplication and without double counting for amounts paid in respect of the Common Stock and/or Preferred Stock (i.e., with respect to the Aggregate Common Payment and the Aggregate Preferred Payment such amount will be split based on the Common Stock Proceeds Percentage and Liquidation Preference Proceeds Percentage, respectively), an aggregate amount of cash equal to (i) the portion of the Adjustment Escrow Amount paid or payable to the Effective Time Holders pursuant to this Agreement and the Escrow Agreement ***plus*** (ii) after giving effect to the adjustments pursuant to Section 1.11, any payment arising under Section 1.11(e)(i) paid or payable to the Effective Time Holders ***plus*** (iii) any amounts paid or payable to the Effective Time Holders arising under SECTION 6 of this Agreement and the Escrow Agreement ***plus*** (iv) the portion of the Reserve Amount paid or payable to the Effective Time Holders pursuant to Section 1.9 ***plus*** (v) any amounts paid or payable to the Effective Time Holders pursuant to Section 6.9(k). For the avoidance of doubt, the Additional Merger Consideration determined or calculated as of the Closing Date shall be deemed to be \$0.00.

“Adjustment Calculation Time” means 11:59 p.m. on the day immediately prior to the Closing Date.

“Adjustment Pro Rata Share” shall mean, with respect to each Effective Time Holder, the percentage set forth on the Payout Spreadsheet opposite such Effective Time Holder’s name under the column “Adjustment Pro Rata Share”, which shall be equal to (i) that portion of the Merger Consideration such Effective Time Holder is entitled to receive ***divided by*** (ii) the aggregate amount of Merger Consideration that all Effective Time Holders are entitled to receive.

“Affiliate” when used with respect to any specified Person, shall mean any other Person who or that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person.

“Affiliated Group” shall mean any affiliated group within the meaning of Code Section 1504(a) or any similar group defined under a similar provision of any applicable Legal Requirement.

“Aggregate Common Closing Payment” shall mean an aggregate amount of cash equal to (i) the Merger Consideration (calculated as of the Closing Date) ***less*** (ii) the Aggregate Preferred Liquidation Preference ***less*** (iii) the portion of the Adjustment Escrow Amount contributed by the Effective Time Holders in respect of the Common Stock Merger

Consideration (which portion shall equal the Adjustment Escrow Amount multiplied by the Common Stock Proceeds Percentage) less (iv) the portion of the Indemnity Escrow Amount contributed by the Effective Time Holders in respect of the Common Stock Merger Consideration (which portion shall equal the Indemnity Escrow Amount multiplied by the Common Stock Proceeds Percentage) less (v) the portion of the Reserve Amount contributed by the Effective Time Holders in respect of the Common Stock Merger Consideration (which portion shall equal the Reserve Amount multiplied by the Common Stock Proceeds Percentage).

“Aggregate Common Payment” shall mean, as of any date of determination, an aggregate amount of cash equal to (i) the Aggregate Common Closing Payment plus (ii) the portion of any Additional Merger Consideration paid or payable to the Effective Time Holders in accordance with this Agreement.

“Aggregate Preferred Closing Payment” shall mean an aggregate amount of cash equal to (i) the Aggregate Preferred Liquidation Preference plus (ii) an amount equal to the product of (x) the Total Outstanding Preferred Shares multiplied by (y) the Per Share Common Stock Merger Consideration (calculated as of the Closing Date) less (iii) the portion of the Adjustment Escrow Amount contributed by the Effective Time Preferred Stockholders in respect of the Aggregate Liquidation Preference (which portion shall equal the Adjustment Escrow Amount multiplied by the Liquidation Preference Proceeds Percentage) less (iv) the portion of the Indemnity Escrow Amount contributed by the Effective Time Preferred Stockholders in respect of the Aggregate Preferred Liquidation Percentage (which portion shall equal the Indemnity Escrow Amount multiplied by the Liquidation Preference Proceeds Percentage) less (v) the portion of the Reserve Amount contributed by Effective Time Preferred Stockholders in respect of the Aggregate Preferred Liquidation Preference (which portion shall equal the Reserve Amount multiplied by the Liquidation Preference Proceeds Percentage).

“Aggregate Preferred Liquidation Preference” shall mean \$32,714,794.52.

“Aggregate Preferred Payment” shall mean, as of any date of determination, an aggregate amount of cash equal to (i) the Aggregate Preferred Closing Payment plus (ii) the portion of any Additional Merger Consideration paid or payable to the Effective Time Preferred Stockholders in accordance with this Agreement.

“Business” shall mean the business of the Company and its Subsidiary.

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

“Common Effective Time Holder” shall mean each holder of Common Stock as of immediately prior to the Effective Time that does not perfect such holder’s appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Section 1.10 of this Agreement.

“Common Stock” shall mean the common stock, par value \$0.0001 per share, of the Company.

“Common Stock Merger Consideration” shall mean the Merger Consideration (calculated as of the Closing Date) less the Aggregate Preferred Liquidation Preference.

“Common Stock Proceeds Percentage” shall mean a percentage equal to (a) the Common Stock Merger Consideration divided by (b) the Merger Consideration (calculated as of the Closing Date).

“Company Capital Stock” shall mean the capital stock of the Company, including the Common Stock and the Preferred Stock.

“Company Cash” shall mean all cash and cash equivalents of the Company as of immediately prior to the Effective Time (other than, and reduced for, any Restricted Cash and any cash received on the Closing Date, including from Parent, Merger Sub or their lenders), determined in accordance with GAAP solely to the extent such cash is readily available to be used to make the payments to the Effective Time Holders required by Section 1.10.

“Company Change in Control Payments” shall mean all Liabilities under severance agreements, stay bonuses, incentive bonuses, termination and change of control arrangements and similar obligations that are owed to any Person before, on or after the Closing arising from or that will be triggered, either automatically or with the passage of time, in whole or in part, by the Transactions (including any amounts payable to offset any excise Taxes imposed under Section 4999 of the Code, any related income Taxes and the employer’s share of payroll Taxes with respect to any compensatory payment made in connection with the Transactions); provided, however, Company Change in Control Payments shall (i) include any Liabilities for severance payments payable to Richard Davis pursuant to the employment agreement, by and between Richard Davis and the Company, dated as of March 7, 2010, as amended, and/or the Separation Agreement, dated as of the date hereof, by and between the Company and Richard Davis and (ii) exclude any Liabilities (other than the Liabilities specified in the preceding clause (i)) for the payment of severance upon termination of employment under severance agreements which are triggered as a result of Parent or the Surviving Corporation terminating such Person’s employment with the Surviving Corporation on or following the Closing Date.

“Company Charter” shall mean the certificate of incorporation of the Company as in effect immediately prior to the Effective Time.

“Company Debt” shall mean the aggregate amount of any Indebtedness of the Company and/or its Subsidiary as of immediately prior to the Effective Time.

“Company Intellectual Property” shall have the meaning set forth in Section 2.14(b).

“Company Option” shall mean each issued and outstanding option, whether or not then vested, to purchase shares of Common Stock under the Company Option Plan.

“Company Option Plan” shall mean the Company’s 2004 Long-Term Incentive Plan (as Amended and Restated October 5, 2007).

“Company Product” shall mean any product or service (hardware, software or otherwise) that is or has been designed, developed, manufactured, marketed, distributed, provided, licensed, or sold by the Company at any time since January 1, 2008 from which the Company or its Subsidiary derives revenue or has ongoing obligations (including maintenance obligations).

“Company Transaction Expenses” shall mean all Transaction Expenses of the Company that remain unpaid as of the Adjustment Calculation Time.

“Contract” shall mean any contract (written or oral), undertaking, commitment, arrangement, plan or other legally binding agreement or understanding.

“Control” shall mean, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The term ***“Controlled”*** shall have a correlative meaning.

“Customs & International Trade Laws” shall mean any law, statute, order of a Governmental Body, regulation, rule, permit, license, directive, ruling, order, decree, ordinance, award, or other decision or requirement, including any amendments, having the force or effect of law, of any arbitrator, court, government or government agency or instrumentality or other Governmental Body, concerning the importation, exportation, reexportation, or deemed exportation of products, technical data, technology and/or services, and the terms and conduct of transactions and making or receiving of payment related to such importation, exportation, reexportation or deemed exportation, including, but not limited to, as applicable, the Tariff Act of 1930, as amended, and other laws, regulations, and programs administered or enforced by U.S. Customs and Border Protection, the U.S. Department of Commerce (***“Commerce”***), the U.S. International Trade Commission, U.S. Immigration and Customs and Enforcement, and their predecessor agencies; the Export Administration Act of 1979, as amended; the Export Administration Regulations, including related restrictions with regard to transactions involving persons and entities on the Commerce Denied Persons List or Entity List; the Arms Export Control Act, as amended; the International Traffic in Arms Regulations, including related restrictions with regard to transactions involving persons and entities on the Debarred List; the International Emergency Economic Powers Act, as amended; the Trading With the Enemy Act, as amended; the embargoes and restrictions administered by the U.S. Department of the Treasury, Office of Foreign Assets Control (***“OFAC”***); orders of the President regarding embargoes and restrictions on transactions with designated countries and entities, including persons and entities designated on OFAC’s list of Specially Designated Nationals and Blocked

Persons; the antiboycott regulations administered by Commerce; and the antiboycott regulations administered by the U.S. Department of the Treasury and IRS.

“Damages” subject to Section 6.5(g), shall mean any and all damages, losses, claims or Liabilities, whether or not arising out of third party claims (including, without limitation, any interest, penalties, reasonable attorneys fees and expenses and fees and disbursements of investigators, consultants, expert witnesses, accountants and other professionals and all other amounts paid in investigation, defense, assertion or settlement of any of any claim or the enforcement of any rights hereunder).

“DGCL” shall mean the General Corporation Law of the State of Delaware.

“Deferred Revenue” shall mean, as of the Adjustment Calculation Time, an amount equal to (x) all deferred revenue of the Company and its Subsidiary (including, for the avoidance of doubt, amounts collected from customers for services to be rendered after the Closing) minus (y) all unbilled receivables, in each case, determined on a consolidated basis in accordance with GAAP and, to the extent consistent with GAAP, the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Audited Financial Statements. An illustration (by way of example and for illustrative purposes only) of the calculation of Deferred Revenue as of June 30, 2013 is attached hereto as **Exhibit I**.

“Deferred Revenue Target” shall mean \$17,050,033.

“Effective Time Holder” shall mean (i) each holder of Common Stock as of immediately prior to the Effective Time that does not perfect such holder’s appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Section 1.10 of this Agreement and (ii) each holder of Preferred Stock as of immediately prior to the Effective Time that does not perfect such holder’s appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Section 1.10 of this Agreement.

“Effective Time Preferred Stockholders” shall mean (i) each holder of Preferred Stock as of immediately prior to the Effective Time that does not perfect such holder’s appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Section 1.10 of this Agreement.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Environmental Laws” shall mean all Legal Requirements related to pollution or protection of the environment, or related to public or occupational health or safety.

“Escrow Agent” shall mean Wells Fargo Bank, N.A. in its capacity as Escrow Agent pursuant to the Escrow Agreement.

“Escrow Agreement” shall mean the escrow agreement to be entered into at the Closing, by and among Parent, the Stockholders’ Representative and the Escrow Agent, attached hereto as **Exhibit J**.

“Functionally Material” shall mean: (i) replacement of the particular Software or other Intellectual Property for use with any Company Products would be burdensome to the Company in terms of timing or cost; or (ii) right or license to the particular Software or Intellectual Property requires the payment of money in excess of \$50,000 for either of the fiscal years ending December 31, 2012 or December 31, 2011 or during the trailing-twelve months ending on the date of the Most Recent Balance Sheet.

“Fundamental Representations” shall mean, with respect to the Company, the representations and warranties of the Company set forth in Section 2.1 (Existence and Power), Section 2.2 (Corporate Authorization), Section 2.3 (Capitalization), Section 2.4 (Subsidiary), Section 2.23 (Finder’s Fees) and Section 2.25 (Payments under the Agreement) and, with respect to Parent and Merger Sub, the representations and warranties of Parent and Merger Sub set forth in Section 3.1 (Due Organization), Section 3.2 (Authority; Binding Nature of Agreement) and Section 3.3 (Finder’s Fees).

“GAAP” shall mean generally accepted accounting principles in the United States, consistently applied.

“Governmental Body” shall mean any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or Entity and any court or other tribunal, or any subdivision, department, or branch of any of the foregoing); or (d) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, settlement, award or binding agreement issued, promulgated or entered by or with any Governmental Body or arbitrator or arbitral panel.

“Hazardous Substance” shall mean any hazardous, toxic or radioactive substance, material or waste, or any pollutant or contaminant, including petroleum and asbestos, and including any substance that is defined, regulated or classified in any Environmental Law or that may give rise to liability under any Environmental Law or for which standards of conduct may be imposed under any Environmental Law.

“Indebtedness” means, with respect to the Company and its Subsidiary, as of any date of determination, without duplication, the sum of: (a) all indebtedness of the Company or its Subsidiary, including for borrowed money, or issued in substitution for, or in exchange of, such indebtedness, whether current or funded, secured or unsecured; (b) all Liabilities of the Company or its Subsidiary evidenced by any note, bond, debenture or other debt security; (c) all Liabilities for the deferred purchase price of property or services with respect to which the Company or its Subsidiary is liable, contingently or otherwise, as obligor or otherwise, including any earnout or other deferred purchase price Liabilities (excluding: (i) amounts owed to service providers in the ordinary course of business for future but unbilled and unperformed services pursuant to ongoing service Contracts, and (ii) trade payables in the ordinary course which are included in the calculation of Net Working Capital); (d) an amount equal to \$760,127 (which is an agreed upon amount representing deferred rent treated as “Indebtedness” for purposes of this Agreement, regardless of the actual amount of deferred rent), (e) all Liabilities with respect to any leases which are recorded as capital leases, or are required by GAAP to be recorded, as capital leases; (f) the aggregate dollar amount of any commitment by which the Company or its Subsidiary assures a creditor against loss (including contingent reimbursement obligations with respect to bankers acceptances, fidelity bonds, surety bonds, performance bonds and letters of credit); (g) all Liabilities of the Company or its Subsidiary secured by a purchase money mortgage or other Liens; (h) all Liabilities under any synthetic lease or any lease which has been, or should be under GAAP, recorded as a capital lease; (i) all Liabilities with respect to any interest rate swaps or hedging arrangements; (j) all Liabilities and other amounts owed by the Company or its Subsidiary to any Effective Time Holder or such Person’s Affiliates (other than pursuant to the terms of this Agreement) (other than, in the case of employees of the Company or its Subsidiary, ordinary course accrued salary, wages or bonuses which are included in the calculation of Net Working Capital); (k) all amounts owed by the Company or its Subsidiary to any Person under any pension or deferred compensation arrangements; (l) all Liabilities of third Persons of the type referred to herein which are directly or indirectly guaranteed by the Company or its Subsidiary or which the Company or its Subsidiary has agreed (contingently or otherwise) to purchase, assume or otherwise acquire or in respect of which it has otherwise assured a creditor against loss; (m) an amount equal to \$500,000 (which is an agreed upon amount of additional Indebtedness) (***“Agreed Upon Debt”***) and (n) all Liabilities arising out of any breach of the foregoing obligations. For purposes of calculating Company Debt, all accrued interest, fees and other expenses owed with respect to the Indebtedness referred to herein, including but not limited to, prepayment penalties, consent fees, “breakage” costs, “break fees,” make-whole amounts or similar payments or contractual charges which would be payable if Indebtedness were paid in full at Closing shall be treated as Indebtedness.

“Indemnified Taxes” shall mean: (a) all Taxes (or the non-payment thereof) of the Company and its Subsidiary for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any taxable period that includes (but does not end on) the Closing Date (***“Pre-Closing Tax Period”***), including the employer’s share of payroll taxes imposed on any Company Change in Control Payment, Taxes imposed on payments made

to any holder of Company Options (including payments pursuant to the release of any Escrow Amount) or Taxes imposed on any other compensatory payments made in connection with the Transactions, except to the extent such Taxes are both included in the calculation of Working Capital that is reflected in the Final Statements and taken into account in the calculation of the Final Merger Consideration; (b) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company or its Subsidiary (or any predecessor of any of the foregoing) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar state, local, or non-U.S. law or regulation; (c) any and all Taxes of any Person imposed on the Company or its Subsidiary as a transferee or successor, by contract or pursuant to any law, rule, or regulation as the result of transactions or events occurring prior to the Closing Date; (d) any and all Taxes attributable to an election made on or prior to the Closing Date under Section 108(i) of the Code; and (e) the cost of (1) preparing, filing or amending any Tax Return prepared pursuant to Section 6.9(j), and (2) defending any Tax Return for a Pre-Closing Tax Period.

“Indemnity Pro Rata Share” shall mean, with respect to each Effective Time Holder who has executed a Joinder, the percentage set forth on the Payout Spreadsheet opposite such Effective Time Holder’s name under the column “Indemnity Pro Rata Share”, which shall be equal to (i) that portion of the Merger Consideration such Effective Time Holder is entitled to receive ***divided by*** (ii) the aggregate amount of Merger Consideration that all Effective Time Holders that have executed Joinders are entitled to receive. For the avoidance of doubt, the aggregate Indemnity Pro Rata Share of all Effective Time Holders who have executed Joinders shall at all times equal 100%.

“Intellectual Property ” shall mean all of the following in any jurisdiction throughout the world: (a) trademarks, trade dress, service marks, certification marks, corporate names, logos and slogans, trade names (and all translations, adaptations, derivations and combinations of the foregoing), and other indicia of source and the goodwill associated with the foregoing, including all registrations and all applications for registration of the foregoing (collectively, ***“Trademarks”***); (b) original works of authorship and other copyrightable works; (c) trade secrets, non-public and confidential business information, customer lists, reports, software development methodologies, technical information, process technology, know-how and inventions (whether patentable or unpatentable and whether or not reduced to practice) (collectively, ***“Trade Secrets”***); (d) software, including without limitation data files and compilations of data, Source Code, Object Code, application programming interfaces, databases and other software-related specifications and documentation (collectively, ***“Software”***); and (e) registered Internet domain names and uniform resource locators (***“Domain Names”***).

“Intellectual Property Rights” shall mean all proprietary rights and any similar or equivalent rights of the following types, in each case under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, mask works, and other related rights in works of authorships

(“**Copyrights**”), (b) Trademark rights, (c) Trade Secret rights, (d) Patent rights, (e) all other proprietary rights in Intellectual Property of every kind and nature, (f) all registrations, renewals, reissues of, and applications for, any of the rights referred to in the foregoing clauses (a) through (e) above with or by any Governmental Body in any jurisdiction, and (g) claims, causes of action and defenses relating to the enforcement of any of the foregoing For the purposes of this definition, “**Patents**” shall mean all patents and patent applications, all patent disclosures and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, re-examinations, and extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like rights.

“**Knowledge**” shall mean with respect to the Company or its Subsidiary, the actual knowledge, after reasonably inquiry, of Richard Davis, Russ Odom, Donald Prodehl, Craig Dellorso, Margaret Padalino and Patrick Dorsey.

“**Lease**” shall mean all leases, subleases, licenses, concessions and other agreements (written or oral) pursuant to which the Company holds any Leased Real Property, including the right to all security deposits and other amounts and instruments deposited by or on behalf of the Company thereunder.

“**Leased Real Property**” means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property held by the Company Group.

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

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

“**Liability**” shall mean any liability, debt, obligation, duty, deficiency, interest, Tax, penalty, fine, demand, judgment, cause of action or other loss (including loss of benefit), cost or expense of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, whether or not foreseeable, and whether due or become due and regardless of when asserted.

“**Lien**” shall mean any lien (statutory or otherwise), mortgage, pledge, license, charge, option, hypothecation, collateral assignment, encumbrance, security interest, restriction or similar claim in equity of any kind or nature whatsoever, other than Permitted Liens.

“**Liquidation Preference Proceeds Percentage**” shall mean a percentage equal to (a) the Aggregate Preferred Liquidation Preference divided by (b) the Merger Consideration (calculated as of the Closing Date).

“**made available**” shall mean that the Company has posted the materials in question prior to the date of this Agreement to the virtual data rooms managed by the Company or its Representatives.

“**Material Adverse Effect**” shall mean any change, event, circumstance, occurrence, condition, fact, development or effect that has or would reasonably be expected to have, either individually or in the aggregate with all other changes, events, circumstances, occurrences, conditions, facts, developments or effects, a material adverse effect on the business, assets, condition (financial or otherwise), results of operations of the Company and its Subsidiary, or on the ability of the Company or the Company’s stockholders to timely consummate the Transactions; *provided, however*, that none of the following shall be deemed to constitute, and none of the following (or the effects thereof) shall be taken into account in determining whether there has been, a Material Adverse Effect: any adverse change, event, development, or effect arising from or relating to (i) general business or economic conditions, (ii) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, (iii) financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (iv) any natural disaster, (v) taking any action required by this Agreement; or (vi) change in financial statements due to change in the application of GAAP, in each case, to the extent such change, event, circumstance, occurrence, condition, fact, development or effect does not have a materially disproportionate effect on the Company or its Subsidiary as compared to other participants in the industry in which the Company or its Subsidiary operate.

“**Net Working Capital**” shall mean, as of the Adjustment Calculation Time, an amount equal to (A) the Company and its Subsidiary’s current assets (excluding (i) cash and cash equivalents (e.g., excluding Company Cash and Restricted Cash), (ii) deferred income Tax or other Tax assets) and (iii) all unbilled receivables, minus (B) the Company and its Subsidiary’s current Liabilities (excluding (i) Company Transaction Expenses, (ii) the current portion of Company Debt, (iii) Deferred Revenue and (iv) income Tax Liabilities), in each case determined on a consolidated basis in accordance with GAAP and, to the extent consistent with GAAP, the methodologies, practices, estimation techniques, assumptions and principles used in the

preparation of the Audited Financial Statements. An illustration of the calculation of Net Working Capital (by way of example and for illustrative purposes only) as of June 30, 2013 is attached hereto as **Exhibit K**.

“Net Working Capital Target” shall mean \$2,155,149.

“Object Code” shall mean one or more computer instructions in machine readable form (whether or not packaged in directly executable form), including any such instructions that are readable in a virtual machine, whether or not derived from Source Code, together with any partially compiled or intermediate code that may result from the compilation, assembly or interpretation of any Source Code. Object Code includes firmware, compiled or interpreted programmable logic, libraries, objects, bytecode, machine code, and middleware.

“Parent Indemnitees” shall mean the following Persons: (a) Parent; (b) Parent’s current and future Affiliates (including the Company and the Surviving Corporation); (c) the respective Representatives and equityholders of the Persons referred to in clauses “(a)” and “(b)” above; and (d) the respective successors and assigns of the Persons referred to in clauses “(a)”, “(b)” and “(c)” above; *provided, however*, that the Effective Time Holders shall not be deemed to be ***“Parent Indemnitees.”***

“Payout Spreadsheet” shall mean the spreadsheet delivered to Parent no less than two (2) business days prior to Closing, setting forth the Company’s good faith calculations (based on the Company’s calculation of the Estimated Merger Consideration and the terms of this Agreement, the Company Charter and other organizational documents of the Company) of: (i) the Common Stock Merger Consideration, (ii) the Common Stock Proceeds Percentage, (iii) the Aggregate Common Closing Payment; (iv) the Per Share Common Stock Merger Consideration, (v) the Aggregate Preferred Liquidation Preference, (vi) the Liquidation Preference Proceeds Percentage, (vii) the portion of the Aggregate Common Closing Payment due to the holders of Preferred Stock, (viii) the Aggregate Preferred Closing Payment, (ix) the Per Share Preferred Stock Merger Consideration, (x) the number of shares of Preferred Stock held by each Effective Time Holder as of the Effective Time; (xi) the number of shares of Common Stock the Preferred Stock held by each Effective Time Holder is convertible into, (xi) the number of shares of Common Stock held by each Effective Time Holder as of the Effective Time; (xii) the portion of the Merger Consideration to which each Effective Time Holder is entitled; (xiii) each Effective Time Holder’s Adjustment Pro Rata Share, Indemnity Pro Rata Share and Reserve Pro Rata Share; (xvi) the amounts payable to each Effective Time Holder on the Closing Date taking into account the contributions by the Effective Time Holders to the Adjustment Escrow Amount, Indemnity Escrow Amount and Reserve Amount and (xvii) each Effective Time Holder’s address; (xviii) each Person entitled to any Company Change in Control Payment and the amount of such Company Change in Control Payment payable to each Person.

“Per Share Common Stock Merger Consideration” shall mean an amount of cash per share of Common Stock equal to (A) the Aggregate Common Payment (B) ***divided by*** the sum of (i) the Total Outstanding Common Shares and (ii) the Total Outstanding Preferred Shares.

“Per Share Preferred Stock Merger Consideration” shall mean an amount of cash per share of Preferred Stock equal to (A) the Aggregate Preferred Payment (B) ***divided by*** the Total Outstanding Preferred Shares.

“Permitted Liens” shall mean (a) liens for Taxes, assessments or other governmental charges (i) not yet due and payable, or (ii) which are being contested in good faith and for which adequate reserves have been established in accordance with GAAP, (b) mechanics’, workmen’s, repairmen’s, warehousemen’s, carriers’ or other like liens arising or incurred in the ordinary course of business if the underlying obligations are (i) not past due, or (ii) are being contested in good faith, (c) in respect of real property, zoning laws, building codes and other land use Laws regulating the use or occupancy of such Asset that constitutes real property or the activities conducted thereon that are imposed by any Governmental Authority having jurisdiction over such real property and are not violated by the current use or occupancy of such real property or the operation of the respective businesses of the Company and its subsidiary as currently conducted thereon; (d) in respect of real property easements, covenants, conditions, restrictions and other similar matters of record affecting title to such real property which do not or would not materially impair the use or occupancy of such real property or the operation of the business of the Company and its subsidiaries as currently conducted thereon; and (e) that certain judgment lien filed in Florida and related to judgment in Case No.: 2007-SC-14350-O in the County Court of the Ninth Judicial Circuit, in and for Orange County, Florida in the amount of \$2,506.93 plus interest (as set forth therein).

“Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, governmental agency or instrumentality, or any other entity.

“Post-Closing Tax Period” shall mean any taxable period starting after Closing Date and the portion after the Closing Date for any taxable period that includes (but does not end on) the Closing Date.

“Preferred Effective Time Holder” shall mean each holder of Preferred Stock as of immediately prior to the Effective Time that does not perfect such holder’s appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Section 1.10 of this Agreement.

“Preferred Stock” shall mean the Company’s Series A Convertible Preferred Stock, par value \$0.0001 per share.

“Reciprocal License” shall mean a license of an item of Software that requires or that conditions any rights granted in such license upon: (i) the disclosure, distribution or licensing of any other Software (other than such item of Software in its unmodified form); (ii) a requirement that any disclosure, distribution or licensing of any other Software (other than such item of Software in its unmodified form) be at no charge; (iii) a requirement that any other licensee of the Software be permitted to modify, make derivative works of, or reverse-engineer any such other Software; (iv) a requirement that such other Software be redistributable by other licensees; or (v) the grant of any patent rights (other than patent rights in such item of Software), including non-assertion or patent license obligations (other than patent obligations relating to the use of such item of Software).

“Records” shall mean all books, records, manuals and other materials and information of the Company including, without limitation, customer records, personnel and payroll records, accounting records, purchase and sale records, price lists, correspondence, quality control records and all research and development files, wherever located.

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

“Reserve Amount” shall mean \$100,000.

“Reserve Pro Rata Share” shall mean, with respect to each Effective Time Holder, the percentage set forth on the Payout Spreadsheet opposite such Effective Time Holder’s name under the column “Reserve Pro Rata Share”, which shall be equal to (i) that portion of the Merger Consideration such Effective Time Holder is entitled to receive divided by (ii) the aggregate amount of Merger Consideration that all Effective Time Holders are entitled to receive.

“Restricted Cash” means any cash, cash equivalents or marketable securities that are subject to a restriction or limitation of any kind, including cash securing letter of credit obligations, vender, customer or other security deposits and cash held as collateral or otherwise restricted as determined in accordance with GAAP.

“Relevant Material Contract” means each Contract listed, or required to be listed, on (i) Section 2.13(a)(i) and Sections 2.13(a)(iii) through 2.13(xxii) and (ii) Section 2.13(a)(ii) which is designated with a (+) plus sign.

“Sale of the Company” shall mean (i) any sale, transfer or issuance or series of sales, transfers and/or issuances of capital stock of Parent by Parent or any holders thereof (including without limitation, any merger, consolidation or other transaction or series of related transactions having the same effect) which results in any Person or group of Persons (as the term "group" is used under the Securities Exchange Act of 1934, as amended from time to time) owning a

majority of the capital stock of Parent possessing the voting power (under ordinary circumstances) to elect a majority of the board of directors of Parent, or (ii) any sale or transfer of all or substantially all of the assets of Parent and its Subsidiaries (taken as a whole) in any transaction or series of transactions (other than sales in the ordinary course of business) to any Person or group of Persons (as the term "group" is used under the Securities Exchange Act of 1934, as amended from time to time).

"Source Code" shall mean one or more statements in human readable form, including comments, definitions and annotations, which are generally formed and organized to the syntax of a computer or programmable logic programming language (including such statements in batch or scripting languages and including hardware definition languages such as VHDL), together with any and all text, data and data structures, diagrams, graphs, charts, presentations, manuals, instructions, procedures and other information that describe the foregoing.

"Subsidiary" or **"Subsidiaries"** of any Person shall mean any other Person of which (or in which) an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is at the time directly or indirectly owned or Controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"Tax" and **"Taxes"** means all federal, state, county, local, foreign, income, gross receipts, license, payroll, employment, estimated, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), escheat, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum and other taxes of any kind whatsoever and including interest, penalties and additions in connection therewith.

"Taxing Authority" shall mean any Governmental Body responsible for the administration or imposition of any Tax.

"Tax Return" shall mean any return (including any information return), report, statement, declaration, estimate, schedule, attachment, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax, and including any amendment thereof.

"Third Party Component" shall mean, with respect to a Company Product, all of the following that are not owned or exclusively controlled by the Company: (i) Software that is embedded in, used in, incorporated into, combined with, linked with, distributed with, provided as a service with or made available with such Company Product, including any Object Code that

is referenced or required to be present or available (including available via another machine connected directly or through a network) in such Company Product for such Company Product to properly function in accordance with its specifications, and (ii) Intellectual Property that is embodied in such Company Product.

“Transactions” shall mean the Merger and the other transactions contemplated by this Agreement and/or the Transaction Documents.

“Transaction Documents” shall mean (a) the Agreement, (b) the Escrow Agreement, (c) the Payout Spreadsheet, (d) the Noncompetition Agreements, (e) the Employment Agreements, (f) the Joinders, (g) the Stockholder Written Consents and (h) the Letters of Transmittal.

“Total Outstanding Common Shares” shall mean the aggregate number of shares of Common Stock issued and outstanding immediately prior to the Effective Time (but excluding any other shares of Common Stock actually held in treasury immediately prior to the Effective Time).

“Total Outstanding Preferred Shares” shall mean the aggregate number of shares of Preferred Stock issued and outstanding immediately prior to the Effective Time (but excluding any other shares of Preferred Stock actually held in treasury immediately prior to the Effective Time).

“Transaction Expenses” shall mean all legal, accounting and broker fees, costs and expenses (excluding Company Change in Control Payments) incurred by the Company or the Effective Time Holders, for which the Company is liable, and that relate to the exploration, negotiation and consummation of the Transactions, including without limitation, the negotiation and preparation of this Agreement, any other Transaction Document, including (i) the cost of the tail policy to be purchased by the Company pursuant to Section 4.8 and (ii) all costs or expenses payable to the Company’s outside legal counsel or financial advisor in connection with this Agreement, any other Transaction Document or any of the Transactions, including the fees and expenses of Cooley LLP.

“Transaction Tax Deductions” shall mean, without duplication, any loss or deduction, to the extent they are deductible for income Tax purposes, resulting from or attributable to: (i) Transaction Expenses (to the extent included in the calculation of the Merger Consideration under Section 1.6(a)(iv)) and (ii) the Company Change in Control Payments (to the extent included in the calculation of the Merger Consideration under Section 1.6(a)(iii)); provided that, in connection with the foregoing, Parent shall cause the Company to make an election under Revenue Procedure 2011-29, 2011-18 IRB, to treat seventy percent (70%) of any success-based fees that were paid by or on behalf of the Company as an amount that did not facilitate the Transaction and therefore treat 70% of such fees as deductible in the taxable period that ends on the Closing Date.