

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM477032

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Assignment of Patents and Trademarks Through State Public Foreclosure Sale		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
WhisperText, Inc.		06/05/2018	Corporation: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Whispertext Equity Investment, LLC		
<b>Street Address:</b>	1999 Avenue of the Stars, Suite 2040		
<b>City:</b>	Los Angeles		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	90067		
<b>Entity Type:</b>	Limited Liability Company: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	5311812	W	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	9497254100		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	9497254043		
<b>Email:</b>	amina@sycr.com		
<b>Correspondent Name:</b>	Arnold V. Mina		
<b>Address Line 1:</b>	Stradling Yocca Carlson & Rauth, P.C.		
<b>Address Line 4:</b>	Newport Beach, CALIFORNIA 92660		
<b>ATTORNEY DOCKET NUMBER:</b>	105156-0001		
<b>NAME OF SUBMITTER:</b>	Arnold Mina		
<b>SIGNATURE:</b>	/Arnold Mina/		
<b>DATE SIGNED:</b>	06/06/2018		
<b>Total Attachments: 148</b>			
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## ASSIGNMENT OF PATENTS AND TRADEMARKS THROUGH STATE PUBLIC FORECLOSURE SALE

On May 11, 2018, Whispertext Equity Investment, LLC, a Delaware limited liability company (“Secured Party”), as assignee of Whispertext Investment LLC, a Delaware limited liability company (an assignee of Silicon Valley Bank, a California corporation), conducted a public foreclosure sale (“Foreclosure Sale”) of the assets of WhisperText, Inc., a Delaware corporation (“Debtor”). The Sale was conducted under the requisite Article 9 secured transactions uniform commercial code provisions of the laws of the State of California and under other applicable statutes in connection with Secured Party’s prior perfected and secured claim in the Debtor’s assets.

Pursuant to the Foreclosure Sale, Secured Party acquired the assets of Debtor, including the patents owned by the Debtor that are described on **Schedule 1** attached hereto (“Foreclosed Patents”), and the trademarks owned by the Debtor that are described on **Schedule 2** attached hereto (“Foreclosed Trademarks”).

In support of this Assignment of Patents and Trademarks through State Public Foreclosure Sale, the Secured Party submits as follows:

1. A duplicate original of the notice of the Foreclosure Sale (“Notice of Sale”) and the notice of the completion of the Foreclosure Sale (“Notice of Completion”), as endorsed by the Secured Party, are attached hereto as **Exhibit A** and are incorporated by reference.
2. The Foreclosed Patents were described as in the various foreclosure documents, and that description is set forth on **Exhibit B** which is attached hereto and incorporated by reference.
3. The Foreclosed Trademarks were described in the various foreclosure documents, and that description is set forth on **Exhibit C** which is attached hereto and incorporated by reference.
4. The security agreements evidencing the Secured Party’s security interest in the Foreclosed Patents and Foreclosed Trademarks are attached hereto as **Exhibit D** and **Exhibit E** and incorporated by reference.
5. An assignment agreement evidencing the assignment of secured interests from Silicon Valley Bank to Whispertext Investment LLC is attached hereto as **Exhibit F**.
6. An assignment agreement evidencing the assignment of secured interests from Whispertext Investment LLC to Secured Party is attached hereto as **Exhibit G**.

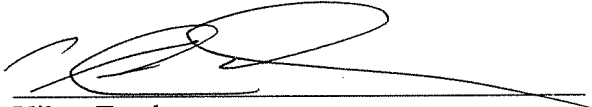


7. A verified statement from an authorized agent of the Secured Party that the Foreclosed Patents and Foreclosed Trademarks were legally foreclosed and that the Foreclosure Sale was conducted in compliance with applicable California law and other statutes is attached hereto as **Exhibit H** and incorporated by reference.
8. A signed statement by the Debtor acknowledging the completion of the Foreclosure Sale and the transfer of the Foreclosed Patents and the Foreclosed Trademarks to the Secured Party is attached hereto as **Exhibit I** and incorporated by reference.

Based on the foregoing, Secured Party hereby requests that the Patent and Trademark Office transfer (i) the patents designated on **Schedule 1** attached hereto, and (ii) the trademarks designated on **Schedule 2** attached hereto, from WhisperText, Inc., the Debtor, to Whispertext Equity Investment, LLC, the Secured Party.

Dated: June 5, 2018

Whispertext Equity Investment, LLC

By:   
Name: Vikas Tandon  
Title: Manager and Authorized Representative of  
Secured Party

# Schedule 1

**SCHEDULE 1 - PATENTS**

<b>Jurisdiction</b>	<b>Title of Invention</b>	<b>Appl. Number/ Filing Date</b>	<b>Patent Number/ Issue Date</b>	<b>Owner of Record/ Security Interests</b>	<b>Status</b>
US	System and method for automatically selecting images to accompany text	15/170,755 June 1, 2016	9,779,115 October 3, 2017	WhisperText, Inc. (Venice, CA) SECURITY INTEREST Recorded on 01/12/2017 Reel/Franchise No. 040960 / 0640 Assignee: Silicon Valley Bank 3003 Tasman Drive Santa Clara, California 95054	Patent issued on October 3, 2017
US	System and method for selecting sponsored images to accompany text	15/010,832 January 29, 2016	9,773,259 September 26, 2017	WhisperText, Inc. (Venice, CA) SECURITY INTEREST Recorded on 01/12/2017 Reel/Franchise No. 040960 / 0640 Assignee: Silicon Valley Bank 3003 Tasman Drive Santa Clara, California 95054	Patent issued on September 26, 2017
US	System and method for automatically selecting images to accompany text	14/729,299 June 3, 2015	9,384,288 July 5, 2016	WhisperText, Inc. (Venice, CA) SECURITY INTEREST Recorded on 01/12/2017 Reel/Franchise No. 040960 / 0640 Assignee: Silicon Valley Bank 3003 Tasman Drive Santa Clara, California 95054	Patent issued on July 5, 2016
US	System and method for selecting sponsored images to accompany text	14/508,088 October 7, 2014	9,286,326 March 15, 2016	WhisperText, Inc. (Venice, CA) SECURITY INTEREST Recorded on 01/12/2017 Reel/Franchise No. 040960 / 0640 Assignee: Silicon Valley Bank 3003 Tasman Drive Santa Clara, California 95054	Patent issued on March 15, 2016


Jurisdiction	Title of Invention	Appl. Number/ Filing Date	Patent Number/ Issue Date	Owner of Record/ Security Interests	Status
US	System and method for automatically selecting images to accompany text	14/478,037 September 5, 2014	9,075,812 July 7, 2015	WhisperText, Inc. (Venice, CA) SECURITY INTEREST Recorded on 01/12/2017 Reel/Frame No. 040960 / 0640 Assignee: Silicon Valley Bank 3003 Tasman Drive Santa Clara, California 95054	Patent issued on July 7, 2015

**TRADEMARK**

**REEL: 006348 FRAME: 0068**

# Schedule 2

**SCHEDULE 2 - TRADEMARKS**

Mark/ Country	Application/ Registration Number	Filing/ Registration Date	Class/ Goods and Services	Status	Owner of Record/ Security Interests
 US	5,311,812	October 17, 2017	IC 009: Downloadable software in the nature of a mobile application for use with computers, portable handheld digital electronic communication devices, mobile devices, and wired and wireless communication devices for accessing, sending, and receiving information and for facilitation of communication; Downloadable software in the nature of a mobile application for social networking; downloadable software in the nature of a mobile application for real-time delivery of data, messages, location, photographs, links, text and other data related thereto; Software and software applications to enable transmission, access, organization, and management of text messaging, instant messaging, online blog journals, text, and images via the internet and other communications networks; software for accessing information on a global computer network; downloadable software via the internet and wireless devices for accessing, sending, and receiving information on a global computer network; downloadable software for computers, portable handheld digital electronic communication devices, mobile devices, and wired and wireless communication devices for facilitation of communication and data transmission in the field of social networking.	Registered October 17, 2017 6 <sup>th</sup> Year Maintenance Due Oct. 17, 2023	WhisperText, Inc. 69 Windward Avenue Venice CALIFORNIA 90291 SECURITY INTEREST Recorded on 01/12/2017 Reel/Frame No. 5964/0675 Assignee: Silicon Valley Bank 3003 Tasman Drive Santa Clara, California 95054
			IC 038: Telecommunication services, namely, providing online and		

Mark/ Country	Application/ Registration Number	Filing/ Registration Date	Class/ Goods and Services	Status	Owner of Record/ Security Interests
			<p>telecommunication facilities for real-time interaction between and among users of computers, mobile and handheld computers, and wired and wireless communication devices in the field of general interest; enabling individuals to send and receive messages via email, instant messaging or a website on the internet in the field of general interest; providing on-line chat rooms and electronic bulletin boards for transmission of messages among users in the field of general interest; providing an online community forum for registered users to share information, photos, audio and video content about themselves, their likes and dislikes and daily activities, to get feedback from their peers, to form virtual communities, and to engage in social networking; providing an on-line forum for communication, namely, anonymous transmission of data, text, images and digital content messages on topics of general interest.</p> <p>IC 045: Online social networking services accessible by means of downloadable mobile applications.</p>		

# Exhibit A



# Notice of Foreclosure Sale

## NOTICE OF SALE AND DISPOSITION OF COLLATERAL

**To:** WhisperText, Inc. (“**Borrower**”)

**ADDRESSES FOR BORROWER AND RELATED PARTIES ON EXHIBIT B**

**From:** Whisptext Investment LLC (“**Secured Party**”)

**Sale Date:** May 11, 2018

**Time:** 10:00 a.m. (PDT)

**Place:** Stradling Yocca Carlson & Rauth, P.C.  
100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401

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This Notice of Sale and Disposition of Collateral (“**Notice**”) is given pursuant to the California Uniform Commercial Code, and any other applicable law (collectively, the “**UCC**”). On the date, time and place set forth above, Secured Party or its designee/assignee will offer at public auction sale (the “**Sale**”) the Collateral (as defined below). Such Collateral consists of all rights title and interest of Borrower, and properties and assets, owned or purported to be owned by the Borrower, of every kind, real, personal and mixed, tangible or intangible, and all as more particularly described on Exhibit A (the “**Collateral**”).

**PLEASE NOTE THAT THE SECURED PARTY RESERVES THE RIGHT TO BID ON THE COLLATERAL, INCLUDING BY WAY OF A CASH BID, CREDIT BID OR SET-OFF OF ITS SECURED DEBT OR A COMBINATION OF ANY OF THE ABOVE.**

**PLEASE NOTE THAT THE SALE IS SUBJECT TO THE RIGHTS AND SECURITY INTEREST OF MARBLE BRIDGE FUNDING GROUP, INC. ("MARBLE BRIDGE") AS DESCRIBED IN THAT INTERCREDITOR AGREEMENT DATED OCTOBER 4, 2017 BETWEEN MARBLE BRIDGE AND SECURED PARTY.**

Reference is made to the letter dated November 27, 2017 (“**Notice of Default**”), the letter dated February 14, 2018 (“**Notice of Acceleration**”), the Loan and Security Agreement, dated November 30, 2015 (as amended, “**Loan and Security Agreement**”), between Secured Party (as successor to Silicon Valley Bank) and Borrower and the related financing documents (with the Loan and Security Agreement, “**Secured Debt Documents**”). Pursuant to the Secured Debt Documents, Secured Party was granted a security interest in the Collateral.

As of the date of this Notice, the Borrower is obligated to Secured Party under the Secured Debt Documents for payment of principal, interest and other Obligations (as defined in the Loan and

Security Agreement), and any other amounts due and owing under the Secured Debt Documents, in the amount of no less than \$8.1 million, plus attorneys fees and costs of collection and enforcement.

At the Sale, Secured Party will accept bids on the Collateral upon the following terms and conditions:

1) All parties that intend to bid at the Sale must provide to Secured Party a cash deposit or a letter of credit in the amount of \$50,000 (“**Deposit**”), which must be received by Secured Party on or before 5:00 p.m. PDT on May 4, 2018. The form of the letter of credit for the Deposit must be acceptable to Secured Party and its counsel in their sole discretion. The Deposit of the non-successful bidders will be refunded and/or returned to such non-successful bidders within three (3) days following the completion of the bidding process. The Deposit of the successful bidder, if any, will be retained by Secured Party and applied against the successful bid, or in the event that the successful bidder fails to complete the Sale, shall be forfeited to Secured Party.

2) Secured Party reserves the right to postpone or renounce the time, date and/or place of the Sale. Secured Party reserves the right to sell the Collateral in lots, bulk, or as individual items. If competing offers with different terms and conditions are submitted, Secured Party reserves the right to determine which offer shall be accepted, and its decision in this matter shall be final.

3) Secured Party shall not be obligated to make or complete a Sale pursuant to this Notice, and reserves the right to reject any and all offers at its sole discretion for any reason whatsoever.

4) The sale of the Collateral shall be made without warranties or representations of any kind by Secured Party or Borrower, including, without limitation, any warranties or representations as to title, fitness for a particular purpose, or any other facts or matters and shall be made on an “as is where is” basis at the Sale.

5) The sale of the Collateral will be subject to any and all security interests of Marble Bridge, and such interests shall continue in the Collateral after the Sale.

6) Secured Party reserves the right to bid (by way of a cash bid, “credit bid” or set off) at the Sale or any continuation or adjournment thereof.

7) The Sale will not be complete until the successful bidder delivers to Secured Party, by and through Secured Party’s counsel, cash, cashier’s check, or immediately available funds, as necessary, in the full amount of the successful bid (net of the Deposit). Notwithstanding the foregoing, Secured Party may, but shall not be required to, allow the successful bidder up to three (3) business days to deliver the full payment as set forth above. In case the successful bidder fails to complete the purchase within the time allowed, the Collateral may thereupon again be offered for sale without further publication or notice or sold to the next highest bidder at the original sale. In the event of a failure to complete the purchase, the bidder will not be relieved of liability to complete the purchase, and the bidder’s Deposit will not be refunded and

such bidder shall be liable for any shortfalls or damages occurred by Secured Party in accepting another bid.

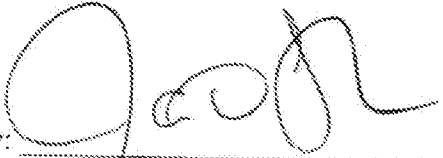
8) The above terms and conditions constitute the principal terms and conditions of the Sale and may be supplemented or amended by Secured Party at any time prior to the Sale.

9) The Borrower is entitled to an accounting of the unpaid indebtedness secured by the Collateral. The Borrower may request an accounting by contacting James O. Thoma of Stradling Yocca Carlson & Rauth, P.C., counsel for Secured Party, at 100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401; telephone number: (424) 214-7000; facsimile number: (424) 214-7010; e-mail: [jthoma@syocr.com](mailto:jthoma@syocr.com).

Individuals or companies interested in bidding at the Sale should contact Mr. Thoma to arrange for review of the due diligence materials, which are comprised of a copy of the Notice of Default, the Notice of Acceleration, the Secured Debt Documents and related documents and information pertaining to the Collateral ("**Diligence Materials**"). Any parties seeking to review the Diligence Materials will be required to execute a non-disclosure agreement prior to such review.

Dated: March 27, 2018

Stradling Yocca Carlson & Rauth, P.C.

By:   
James O. Thoma  
Attorneys for Secured Party,  
WhisperText Investment LLC

## EXHIBIT A

### COLLATERAL<sup>1</sup>

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>1</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Sale and Disposition of Collateral (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).

**EXHIBIT B**

**ADDRESSES**

WhisperText, Inc.  
69 Windward Avenue  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

WhisperText, Inc.  
1240 Morningside Way  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

Incorporating Services, Ltd.  
3500 S. Dupont Hwy  
Dover, DE 19901

Silicon Valley Bank  
15260 Ventura Blvd., Suite 1800  
Sherman Oaks, CA 91403  
Attn: Justin Mauch

Silicon Valley Bank  
1901 Main Street, Third Floor  
Santa Monica, CA 90405  
Attn: Frank O'Brien, Vice President

Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95054

SVB Financial Group  
3003 Tasman Drive, HC 215  
Santa Clara, CA 95054  
Attn: Treasury Department

Silicon Valley Bank  
80 East Rio Salado Parkway, Mail Sort AZ145  
Tempe, AZ 85281  
Attn: Global Deposit Operations

Marble Bridge Funding Group, Inc.  
P.O. Box 8195  
Walnut Creek, CA 94596

Marble Bridge Funding Group, Inc.  
1440 Maria Lane, Suite 210  
Walnut Creek, CA 94596  
Attn: Adam Fragen, Senior Vice President

Fenwick & West LLP  
1191 Second Avenue  
10th Floor  
Seattle, WA 98101  
Attn: Brian Kelly

Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041  
Attn: Ted Wang and Michael Esquivel

Duane Morris LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105  
Attn: Ron Oliner

Levy, Small & Lallas  
815 Moraga Drive  
Los Angeles, CA 90049

# Notice of Completion of Sale



## NOTICE OF COMPLETION OF SALE

**To:** WhisperText, Inc. (“Borrower”)

### ADDRESSES FOR BORROWER AND RELATED PARTIES ON EXHIBIT C

**From:** Whispertext Equity Investment, LLC (“Secured Party”), as assignee of Whispertext Investment LLC (“Investment”)

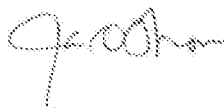
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This Notice of Completion of Sale is to notify the Borrower, and related parties in interest, that on May 11, 2018, at approximately 10:20 a.m. (PDT), the Secured Party concluded the public sale (“Sale”), for auction to the highest bidder, of the Collateral (as defined on Exhibit A annexed hereto, the “Collateral”), as set forth in the “Notice of Sale and Disposition of Collateral” (“Notice”) annexed hereto as Exhibit B. The Sale of the Collateral was conducted pursuant to the Uniform Commercial Code in relation to Secured Party’s security interest, pursuant to the Secured Debt.<sup>1</sup>

The Sale, held pursuant to numerous notices to the Borrower and other potentially interested parties, was successful and resulted in a final sale of the Collateral for a credit bid of \$8,200,000 by Secured Party (the “Successful Bidder”). Accordingly, title to the Collateral was transferred to the Successful Bidder pursuant to the Sale. An accounting will be provided to the Borrower in the near term.

Dated: May 18, 2018

Stradling Yocca Carlson & Rauth,  
a Professional Corporation



James O. Thoma  
Attorneys for Secured Party,  
Whispertext Equity Investment, LLC

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<sup>1</sup> The Sale was commenced pursuant to that certain (i) Loan and Security Agreement, dated November 30, 2015 (as amended, “Loan and Security Agreement”), between Secured Party (as successor to Silicon Valley Bank) and Borrower and the related financing documents (with the Loan and Security Agreement, “Secured Debt”), (ii) the Assignment Agreement, dated as of May 10, 2018, between Secured Party and Investment, (iii) the “Notice of Default” letter dated November 27, 2017, from Investment to the Company, and (iv) the “Notice of Acceleration” letter dated February 14, 2018, from Investment to the Company.

## **EXHIBIT A**

### **COLLATERAL<sup>2</sup>**

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>2</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Completion of Sale (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).

**EXHIBIT B**

**NOTICE OF SALE AND DISPOSITION OF COLLATERAL**

## NOTICE OF SALE AND DISPOSITION OF COLLATERAL

**To:** WhisperText, Inc. (“**Borrower**”)

**ADDRESSES FOR BORROWER AND RELATED PARTIES ON EXHIBIT B**

**From:** Whisertext Investment LLC (“**Secured Party**”)

**Sale Date:** May 11, 2018

**Time:** 10:00 a.m. (PDT)

**Place:** Stradling Yocca Carlson & Rauth, P.C.  
100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401

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This Notice of Sale and Disposition of Collateral (“**Notice**”) is given pursuant to the California Uniform Commercial Code, and any other applicable law (collectively, the “**UCC**”). On the date, time and place set forth above, Secured Party or its designee/assignee will offer at public auction sale (the “**Sale**”) the Collateral (as defined below). Such Collateral consists of all rights title and interest of Borrower, and properties and assets, owned or purported to be owned by the Borrower, of every kind, real, personal and mixed, tangible or intangible, and all as more particularly described on Exhibit A (the “**Collateral**”).

**PLEASE NOTE THAT THE SECURED PARTY RESERVES THE RIGHT TO BID ON THE COLLATERAL, INCLUDING BY WAY OF A CASH BID, CREDIT BID OR SET-OFF OF ITS SECURED DEBT OR A COMBINATION OF ANY OF THE ABOVE.**

**PLEASE NOTE THAT THE SALE IS SUBJECT TO THE RIGHTS AND SECURITY INTEREST OF MARBLE BRIDGE FUNDING GROUP, INC. ("MARBLE BRIDGE") AS DESCRIBED IN THAT INTERCREDITOR AGREEMENT DATED OCTOBER 4, 2017 BETWEEN MARBLE BRIDGE AND SECURED PARTY.**

Reference is made to the letter dated November 27, 2017 (“**Notice of Default**”), the letter dated February 14, 2018 (“**Notice of Acceleration**”), the Loan and Security Agreement, dated November 30, 2015 (as amended, “**Loan and Security Agreement**”), between Secured Party (as successor to Silicon Valley Bank) and Borrower and the related financing documents (with the Loan and Security Agreement, “**Secured Debt Documents**”). Pursuant to the Secured Debt Documents, Secured Party was granted a security interest in the Collateral.

As of the date of this Notice, the Borrower is obligated to Secured Party under the Secured Debt Documents for payment of principal, interest and other Obligations (as defined in the Loan and

Security Agreement), and any other amounts due and owing under the Secured Debt Documents, in the amount of no less than \$8.1 million, plus attorneys fees and costs of collection and enforcement.

At the Sale, Secured Party will accept bids on the Collateral upon the following terms and conditions:

1) All parties that intend to bid at the Sale must provide to Secured Party a cash deposit or a letter of credit in the amount of \$50,000 (“**Deposit**”), which must be received by Secured Party on or before 5:00 p.m. PDT on May 4, 2018. The form of the letter of credit for the Deposit must be acceptable to Secured Party and its counsel in their sole discretion. The Deposit of the non-successful bidders will be refunded and/or returned to such non-successful bidders within three (3) days following the completion of the bidding process. The Deposit of the successful bidder, if any, will be retained by Secured Party and applied against the successful bid, or in the event that the successful bidder fails to complete the Sale, shall be forfeited to Secured Party.

2) Secured Party reserves the right to postpone or renounce the time, date and/or place of the Sale. Secured Party reserves the right to sell the Collateral in lots, bulk, or as individual items. If competing offers with different terms and conditions are submitted, Secured Party reserves the right to determine which offer shall be accepted, and its decision in this matter shall be final.

3) Secured Party shall not be obligated to make or complete a Sale pursuant to this Notice, and reserves the right to reject any and all offers at its sole discretion for any reason whatsoever.

4) The sale of the Collateral shall be made without warranties or representations of any kind by Secured Party or Borrower, including, without limitation, any warranties or representations as to title, fitness for a particular purpose, or any other facts or matters and shall be made on an “as is where is” basis at the Sale.

5) The sale of the Collateral will be subject to any and all security interests of Marble Bridge, and such interests shall continue in the Collateral after the Sale.

6) Secured Party reserves the right to bid (by way of a cash bid, “credit bid” or set off) at the Sale or any continuation or adjournment thereof.

7) The Sale will not be complete until the successful bidder delivers to Secured Party, by and through Secured Party’s counsel, cash, cashier’s check, or immediately available funds, as necessary, in the full amount of the successful bid (net of the Deposit). Notwithstanding the foregoing, Secured Party may, but shall not be required to, allow the successful bidder up to three (3) business days to deliver the full payment as set forth above. In case the successful bidder fails to complete the purchase within the time allowed, the Collateral may thereupon again be offered for sale without further publication or notice or sold to the next highest bidder at the original sale. In the event of a failure to complete the purchase, the bidder will not be relieved of liability to complete the purchase, and the bidder’s Deposit will not be refunded and

such bidder shall be liable for any shortfalls or damages occurred by Secured Party in accepting another bid.

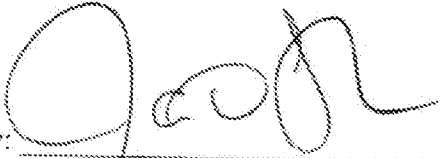
8) The above terms and conditions constitute the principal terms and conditions of the Sale and may be supplemented or amended by Secured Party at any time prior to the Sale.

9) The Borrower is entitled to an accounting of the unpaid indebtedness secured by the Collateral. The Borrower may request an accounting by contacting James O. Thoma of Stradling Yocca Carlson & Rauth, P.C., counsel for Secured Party, at 100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401; telephone number: (424) 214-7000; facsimile number: (424) 214-7010; e-mail: [jthoma@syccr.com](mailto:jthoma@syccr.com).

Individuals or companies interested in bidding at the Sale should contact Mr. Thoma to arrange for review of the due diligence materials, which are comprised of a copy of the Notice of Default, the Notice of Acceleration, the Secured Debt Documents and related documents and information pertaining to the Collateral ("**Diligence Materials**"). Any parties seeking to review the Diligence Materials will be required to execute a non-disclosure agreement prior to such review.

Dated: March 27, 2018

Stradling Yocca Carlson & Rauth, P.C.

By:   
James O. Thoma  
Attorneys for Secured Party,  
WhisperText Investment LLC

## EXHIBIT A

### COLLATERAL<sup>1</sup>

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>1</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Sale and Disposition of Collateral (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).

**EXHIBIT B**

**ADDRESSES**

WhisperText, Inc.  
69 Windward Avenue  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

WhisperText, Inc.  
1240 Morningside Way  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

Incorporating Services, Ltd.  
3500 S. Dupont Hwy  
Dover, DE 19901

Silicon Valley Bank  
15260 Ventura Blvd., Suite 1800  
Sherman Oaks, CA 91403  
Attn: Justin Mauch

Silicon Valley Bank  
1901 Main Street, Third Floor  
Santa Monica, CA 90405  
Attn: Frank O'Brien, Vice President

Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95054

SVB Financial Group  
3003 Tasman Drive, HC 215  
Santa Clara, CA 95054  
Attn: Treasury Department

Silicon Valley Bank  
80 East Rio Salado Parkway, Mail Sort AZ145  
Tempe, AZ 85281  
Attn: Global Deposit Operations

Marble Bridge Funding Group, Inc.  
P.O. Box 8195  
Walnut Creek, CA 94596



Marble Bridge Funding Group, Inc.  
1440 Maria Lane, Suite 210  
Walnut Creek, CA 94596  
Attn: Adam Fragen, Senior Vice President

Fenwick & West LLP  
1191 Second Avenue  
10th Floor  
Seattle, WA 98101  
Attn: Brian Kelly

Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041  
Attn: Ted Wang and Michael Esquivel

Duane Morris LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105  
Attn: Ron Oliner

Levy, Small & Lallas  
815 Moraga Drive  
Los Angeles, CA 90049

## **EXHIBIT C**

### **ADDRESSES**

WhisperText, Inc.  
69 Windward Avenue  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

WhisperText, Inc.  
1240 Morningside Way  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

Incorporating Services, Ltd.  
3500 S. Dupont Hwy  
Dover, DE 19901

Silicon Valley Bank  
15260 Ventura Blvd., Suite 1800  
Sherman Oaks, CA 91403  
Attn: Justin Mauch

Silicon Valley Bank  
1901 Main Street, Third Floor  
Santa Monica, CA 90405  
Attn: Frank O'Brien, Vice President

Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95054

SVB Financial Group  
3003 Tasman Drive, HC 215  
Santa Clara, CA 95054  
Attn: Treasury Department

Silicon Valley Bank  
80 East Rio Salado Parkway, Mail Sort AZ145  
Tempe, AZ 85281  
Attn: Global Deposit Operations

Marble Bridge Funding Group, Inc.  
P.O. Box 8195  
Walnut Creek, CA 94596

Marble Bridge Funding Group, Inc.  
1440 Maria Lane, Suite 210  
Walnut Creek, CA 94596  
Attn: Adam Fragen, Senior Vice President

SulmeyerKupetz  
333 South Hope Street, Thirty-Fifth Floor  
Los Angeles, CA 90071  
Attn: David S. Kupetz, Esq.

Fenwick & West LLP  
1191 Second Avenue  
10th Floor  
Seattle, WA 98101  
Attn: Brian Kelly, Esq.

Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041  
Attn: Ted Wang, Esq. and Michael Esquivel, Esq.

Duane Morris LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105  
Attn: Ron Oliner, Esq.

Levy, Small & Lallas  
815 Moraga Drive  
Los Angeles, CA 90049  
Attn: John Mittelbach, Esq.

# Exhibit B

## EXHIBIT A

### COLLATERAL<sup>1</sup>

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>1</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Sale and Disposition of Collateral (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).

# Exhibit C

## EXHIBIT A

### COLLATERAL<sup>1</sup>

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>1</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Sale and Disposition of Collateral (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).

# Exhibit D



# Loan and Security Agreement

## LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of November 30, 2015 (the “**Effective Date**”) between **SILICON VALLEY BANK**, a California corporation (“**Bank**”), and **WHISPERTEXT, INC.**, a Delaware corporation (“**Borrower**”), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

### **1. ACCOUNTING AND OTHER TERMS**

Except as otherwise expressly provided in this Agreement, (i) accounting terms not defined in this Agreement shall be construed following GAAP and (ii) calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

### **2. LOAN AND TERMS OF PAYMENT**

**2.1 Promise to Pay.** Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

#### **2.1.1 Growth Capital Advances.**

(a) Availability. Subject to the terms and conditions of this Agreement, Bank shall make advances to Borrower (each, a “**Growth Capital Advance**” and, collectively, “**Growth Capital Advances**”), in two (2) tranches in an aggregate principal amount not to exceed the Growth Capital Commitment, as follows: (i) the first tranche (“**Tranche One**”) shall be available to Borrower from the Effective Date through the Tranche One Commitment Termination Date in multiple advances in an aggregate amount not to exceed Six Million Dollars (\$6,000,000) (each Growth Capital Advance being made under Tranche One, a “**Tranche One Growth Capital Advance**” and, collectively, “**Tranche One Growth Capital Advances**”), and (ii) provided that Borrower has achieved the Tranche Two Milestone, the second tranche (“**Tranche Two**”) shall be available to Borrower upon achieving the Tranche Two Milestone through the Tranche Two Commitment Termination Date in multiple advances in an aggregate amount not to exceed Two Million Dollars (\$2,000,000) (each Growth Capital Advance being made under Tranche Two, a “**Tranche Two Growth Capital Advance**” and, collectively, “**Tranche Two Growth Capital Advances**”). Each Tranche One Growth Capital Advance must be in a minimum amount of One Million Dollars (\$1,000,000), provided that (a) the final Tranche One Growth Capital Advance can equal the amount that has not yet been drawn under the Growth Capital Commitment with respect to Tranche One, at any time prior to the Tranche One Commitment Termination Date, and (b) an aggregate principal amount of at least Three Million Dollars (\$3,000,000) in Tranche One Growth Capital Advances must be made prior to January 31, 2016. Each Tranche Two Growth Capital Advance must be in a minimum amount of One Million Dollars (\$1,000,000), provided that the final Tranche Two Growth Capital Advance can equal the amount that has not yet been drawn under the Growth Capital

Commitment with respect to Tranche Two, at any time prior to the Tranche Two Commitment Termination Date.

(b) Repayment.

(i) Tranche One. Borrower shall repay each Tranche One Growth Capital Advance as follows: (A) commencing on the first (1<sup>st</sup>) calendar day of the first (1<sup>st</sup>) month after the Funding Date of such Tranche One Growth Capital Advance and continuing on the first (1<sup>st</sup>) calendar day of each month thereafter through November 30, 2016, payments of accrued interest only; and (B) commencing on December 1, 2016 (the “**Tranche One Conversion Date**”) and continuing on the first (1<sup>st</sup>) calendar day of each month thereafter, thirty (30) equal monthly payments of principal each in an amount which would fully amortize the outstanding Tranche One Growth Capital Advance, as of the Tranche One Conversion Date, over the Growth Capital Repayment Period, plus accrued interest.

(ii) Tranche Two. Borrower shall repay the Tranche Two Growth Capital Advance as follows: (A) commencing on the first (1<sup>st</sup>) calendar day of the first (1<sup>st</sup>) month after the Funding Date of such Tranche Two Growth Capital Advance and continuing on the first (1<sup>st</sup>) calendar day of each month thereafter through December 31, 2016, payments of accrued interest only; and (B) commencing on January 1, 2017 (the “**Tranche Two Conversion Date**”) and continuing on the first (1<sup>st</sup>) calendar day of each month thereafter, thirty (30) equal monthly payments of principal each in an amount which would fully amortize the outstanding Growth Capital Advance, as of the Tranche Two Conversion Date, over the Growth Capital Repayment Period, plus accrued interest.

(iii) Principal and Interest Payments. All unpaid principal and accrued and unpaid interest on each Growth Capital Advance is due and payable in full on the applicable Growth Capital Maturity Date. After repayment, no Growth Capital Advance may be reborrowed.

(c) Prepayment.

(i) Mandatory Prepayment Upon an Acceleration. If the Growth Capital Advances are accelerated by Bank following the occurrence of an Event of Default or otherwise, Borrower shall immediately pay to Bank an amount equal to the sum of: (A) all accrued and unpaid interest with respect to each Growth Capital Advance through the date the prepayment is made; plus (B) all unpaid principal with respect to each Growth Capital Advance; plus (C) the Final Payment; plus (D) the Make-Whole Premium; (E) all other sums, if any, that shall have become due and payable hereunder as of the date of repayment, including interest at the Default Rate with respect to any past due amounts.

(ii) Voluntary Prepayment. So long as an Event of Default has not occurred and is not continuing, Borrower shall have the option to prepay all, but not less than all, of the Growth Capital Advances advanced by Bank under this Agreement, provided Borrower (A) provides written notice to Bank of its election to exercise to prepay the Growth Capital Advances at least ten (10) days prior to such prepayment, and (B) pays, on the date of the prepayment (i) all accrued and unpaid interest with respect to each Growth Capital Advance

through the date the prepayment is made; plus (ii) all unpaid principal with respect to each Growth Capital Advance; plus (iii) the Final Payment; (iv) the Make-Whole Premium; plus (v) all other sums, if any, that shall have become due and payable hereunder, including interest at the Default Rate with respect to any past due amounts. Notwithstanding the foregoing, Bank agrees to waive the Make-Whole Premium for any voluntary prepayment if Bank agrees to refinance the Growth Capital Advances prior to the Growth Capital Maturity Date and no Event of Default has occurred and is continuing.

## 2.2 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.2(b), the principal amount outstanding under the Growth Capital Advances shall accrue interest at a floating per annum rate equal to the Prime Rate plus three-quarters of one percent (0.75%), which interest shall be payable monthly in accordance with Section 2.2(d) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percent (5.0%) above the rate that is otherwise applicable thereto (the “**Default Rate**”). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.2(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Payment; Interest Computation. Interest is payable monthly on the first (1<sup>st</sup>) calendar day of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Pacific time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

## 2.3 Fees. Borrower shall pay to Bank:

(a) Commitment Fee. A fully earned, non-refundable commitment fee of Twenty-Five Thousand Dollars (\$25,000), on the Effective Date (the “**Commitment Fee**”);

(b) Reserved.

(c) Final Payment. The Final Payment due on the earlier of (i) the earliest Growth Capital Maturity Date, or (ii) at the time of a prepayment pursuant to the terms of Sections 2.1.1(c)(i) and 2.1.1(c)(ii);

(d) Make-Whole Premium. The Make-Whole Premium when due pursuant to the terms of Sections 2.1.1(c)(i) and 2.1.1(c)(ii); and

(e) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement, which legal fees and expenses for the documentation and negotiation of this Agreement will (on a best efforts basis) not exceed Ten Thousand Dollars (\$10,000) as of the Effective Date so long as there are no more than two (2) reasonable turns of the Loan Documents) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

(f) Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.3 pursuant to the terms of Section 2.4(c). Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.3.

#### **2.4 Payments; Application of Payments; Debit of Accounts.**

(a) All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

**2.5 Withholding.** Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable

hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.5 shall survive the termination of this Agreement.

### **3. CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Credit Extension.** Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

- (a) duly executed original signatures to the Loan Documents;
- (b) duly executed original signatures to the Warrant;
- (c) duly executed original signatures to the Control Agreement (if applicable);
- (d) the Operating Documents and long-form good standing certificates of Borrower certified by the Secretary of State (or equivalent agency) of Borrower's jurisdiction of organization or formation and each jurisdiction in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;
- (e) duly executed original signatures to the completed Borrowing Resolutions for Borrower;
- (f) certified copies, dated as of a recent date, of financing statement searches, as Bank may request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
- (g) the Perfection Certificate of Borrower, together with the duly executed original signature thereto;
- (h) a bailee's waiver in favor of Bank for each location where Borrower maintains property with a third party, by each such third party, together with the duly executed original signatures thereto;
- (i) a copy of Borrower's Amended and Restated Investors' Rights Agreement dated September 16, 2014 by and among Borrower and the investors listed on Schedule A thereto and any amendments thereto;

(j) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank; and

(k) payment of the fees and Bank Expenses then due as specified in Section 2.4 hereof.

**3.2 Conditions Precedent to all Credit Extensions.** Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) timely receipt of an executed Payment/Advance Form;

(b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Payment/Advance Form and on the Funding Date of each Credit Extension, taking into account updates thereof subsequent to the Effective Date to the extent permitted by notice to the Bank by one or more specific provisions of this Agreement; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(c) Bank determines in its sole but reasonable discretion that there has not been a Material Adverse Change.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

**3.4 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Growth Capital Advance set forth in this Agreement, to obtain a Growth Capital Advance, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 p.m. Pacific time on the Funding Date of a Growth Capital Advance. Together with any such electronic or facsimile notification, Borrower shall deliver to Bank by electronic mail or facsimile a completed Payment/Advance Form executed by a Responsible Officer or his or her designee. Bank may

rely on any telephone notice given by a person whom Bank believes is a Responsible Officer or designee. Bank shall credit Growth Capital Advances to the Designated Deposit Account. Bank may make Growth Capital Advances under this Agreement based on instructions from a Responsible Officer or his or her designee or without instructions if the Growth Capital Advances are necessary to meet Obligations which have become due.

#### **4. CREATION OF SECURITY INTEREST.**

**4.1 Grant of Security Interest.** Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. Bank shall use reasonable commercial efforts to inform Borrower within a commercially reasonable period of time what constitutes acceptable cash collateral with respect to each Bank Services Agreement in force and effect when Borrower delivers its written termination notice. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its business judgment), to secure all of the Obligations relating to such Letters of Credit.

**4.2 Priority of Security Interest.** Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a



security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

**4.3 Authorization to File Financing Statements.** Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code.

## **5. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

**5.1 Due Organization, Authorization; Power and Authority.** Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled "Perfection Certificate". Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

**5.2 Collateral.** Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the terms of Section 6.6(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is, to Borrower's knowledge, valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business. Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

**5.3 Litigation.** There are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, One Hundred Thousand Dollars (\$100,000).

**5.4 Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

**5.5 Solvency.** The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

**5.6 Regulatory Compliance.** Borrower is not an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower’s or any of its Subsidiaries’ properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue their respective businesses as currently conducted.

**5.7 Subsidiaries; Investments.** Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Twenty-Five Thousand Dollars (\$25,000).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a “Permitted Lien.” Borrower is unaware of any claims or adjustments proposed for any of Borrower’s prior tax years which could reasonably be expected to result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely as working capital, and to fund its general business requirements and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure.** No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to

state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**5.11 Definition of “Knowledge.”** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower’s knowledge or awareness, to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

## **6. AFFIRMATIVE COVENANTS**

Until such time as all Obligations are satisfied in full and Bank has no further obligation to make Credit Extensions to Borrower, Borrower shall do all of the following:

### **6.1 Government Compliance.**

(a) Maintain its and all its Subsidiaries’ legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower’s business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject, where the failure to so comply could reasonably be expected to have a material adverse effect on Borrower’s business or operations.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in the Collateral. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

### **6.2 Financial Statements, Reports, Certificates.** Provide Bank with the following:

(a) Monthly Financial Statements. As soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower’s consolidated operations (including key operating metrics) for such month certified by a Responsible Officer and in a form acceptable to Bank (the “**Monthly Financial Statements**”);

(b) Monthly Compliance Certificate. Within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement (if any) and such other information as Bank may reasonably request;

(c) Annual Operating Budget and Financial Projections. Within sixty (60) days after the last day of each fiscal year of Borrower and as more frequently updated by

Borrower, (i) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the upcoming fiscal year of Borrower as approved by Borrower's Board of Directors, and (ii) annual financial projections for such fiscal year (on a quarterly basis) as approved by Borrower's board of directors, together with any related business forecasts used in the preparation of such annual financial projections;

(d) Annual Audited Financial Statements. As soon as available, but no later than thirty (30) days after the last day of Borrower's fiscal year, company prepared annual consolidated financial statements prepared under GAAP, consistently applied (except that such financial statements may (x) be subject to normal year-end audit adjustments and (y) not contain all notes thereto that may be required in accordance with GAAP), certified by a Responsible Officer and in a form reasonably acceptable to Bank and commensurate in form and substance with those provided to Borrower's Board of Directors; provided, however, for each fiscal year, beginning with Borrower's 2015 fiscal year, that Borrower's Board of Directors directs Borrower to obtain annual audited financial statements, Borrower shall provide to Bank (in lieu of the company prepared annual financial statements referenced above), within one hundred eighty (180) days after the last day of such fiscal year, annual, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank (provided that such opinion may contain a "going concern" qualification typical for venture backed companies similar to Borrower);

(e) Other Statements. Within fifteen (15) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(f) SEC Filings. In the event that Borrower becomes subject to the reporting requirements under the Exchange Act within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents;

(g) Legal Action Notice. A prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, One Hundred Thousand Dollars (\$100,000) or more; and

(h) Other Financial Information. Other financial information reasonably requested by Bank.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. Borrower must promptly notify Bank of all returns, recoveries, disputes and claims that involve more than Fifty Thousand Dollars (\$50,000).

**6.4 Taxes; Pensions.** Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for (a) deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and (b) taxes, assessments, deposits and contributions which do not, individually or in the aggregate, exceed Twenty-Five Thousand Dollars (\$25,000), and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**6.5 Insurance.**

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as the sole lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(b) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations.

(c) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.5 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank twenty (20) days prior written notice (ten (10) days for non-payment of premium) before any such policy or policies shall be materially altered or canceled. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Bank deems prudent.

**6.6 Operating Accounts.**

(a) Maintain, with Bank and Bank's Affiliates, Borrower's primary banking relationship, including, without limitation, Borrower's operating, depository and investment accounts, foreign exchange and trade services, business credit cards and cash management services.

(b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such.

**6.7 Reserved.**

**6.8 Protection of Intellectual Property Rights.**

(a) (i) Protect, defend and maintain the validity and enforceability of its Intellectual Property which is material for the conduct of Borrower's business (other than Intellectual Property which Borrower licenses from one or more third parties); (ii) promptly advise Bank in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property which is material for the conduct of Borrower's business; and (iii) not allow any Intellectual Property material for the conduct of Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

**6.9 Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower. All Confidential Information obtained by Bank during or as a result of such activities shall be governed by Section 12.9.

**6.10 Right to Invest.** Grant to Bank or its Affiliates a right (but not an obligation) to invest up to Two Million Dollars (\$2,000,000) in Borrower's next bona-fide round of private equity financing (after the Effective Date) on the same terms, conditions and pricing offered to

its lead venture capital investors. Borrower shall give Bank with at least thirty (30) days prior written notice of the private equity financing which notice shall (a) identify the investors participating in such private equity financing and contain the terms, conditions and pricing of the private equity financing, and (b) be delivered to Bank's address set forth in Section 10 hereof. The right granted hereunder shall survive the termination of this Agreement.

**6.11 Access to Collateral; Books and Records.** Allow Bank, or its agents, at reasonable times, on three (3) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Borrower's Books. Such inspections or audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as Bank shall determine necessary in its good faith business judgment. The foregoing inspections and audits shall be at Borrower's expense, and the charge therefor shall be \$850 per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than ten (10) days in advance, and Borrower cancels or seeks to reschedule the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank's rights or remedies), Borrower shall pay Bank a fee of One Thousand Dollars (\$1,000) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

**6.12 Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, Borrower shall, if requested by Bank in its sole discretion, (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to cause such Subsidiary to become a co-borrower hereunder, together with such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.12 shall be a Loan Document.

**6.13 Further Assurances.** Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement.

## **7. NEGATIVE COVENANTS**

Borrower shall not do any of the following without Bank's prior written consent:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its



business or property, except for Transfers (each a “**Permitted Transfer**”) (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2; (e) consisting of Borrower’s use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; and (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business; provided, however, that Borrower’s Subsidiary organized under the laws of China shall not be prohibited from making any Transfer of any part of its business or property,

## **7.2 Changes in Business, Management, Control, or Business Locations.**

(a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) suffer a departure of both the Chief Executive Officer and President of Borrower and no replacement reasonably satisfactory to Bank is made within thirty (30) days after his departure from Borrower; or (d) permit or suffer any Change in Control.

Borrower shall not, without at least fifteen (15) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Hundred Thousand Dollars (\$100,000) in Borrower’s assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of One Hundred Thousand Dollars (\$100,000) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of One Hundred Thousand Dollars (\$100,000) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank in its reasonable discretion.

## **7.3 Mergers or Acquisitions.**

Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary) except where (a) total consideration including cash and the value of any non-cash consideration, for all such transactions does not in the aggregate exceed Five Hundred Thousand Dollars (\$500,000) in any fiscal year of Borrower; (b) no Event of Default has occurred and is continuing or would exist after giving effect to the transactions; and (c) Borrower is the surviving legal entity. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

## **7.4 Indebtedness.**

Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except (i) customary restrictions on assignment in any license agreement where Borrower or Subsidiary is the licensee (and not the licensor) and (ii) as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

**7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6(b) hereof.

**7.7 Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock, provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock; and (iii) Borrower may repurchase the stock of former employees or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, provided that the aggregate amount of all such repurchases does not exceed One Hundred Thousand Dollars (\$100,000) per fiscal year; or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business or as otherwise permitted by this Agreement, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

**7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

**7.10 Compliance.** Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the

violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

## **8. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Growth Capital Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

### **8.2 Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.4, 6.5, 6.6, 6.7 (only if a financial covenant is applicable in such Section), 6.8(b), 6.10, 6.11 or violates any covenant in Section 7; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

**8.3 Investor Abandonment.** Bank determines, in its good faith judgment, that it is the clear intention of Borrower's investors to not continue to fund the Borrower in the amounts and timeframe necessary to enable Borrower to satisfy the Obligations as they become due and payable;

**8.4 Lien Priority.** There is a material impairment in the priority of Bank's security interest in the Collateral;

**8.5 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary) in excess of Fifty Thousand Dollars (\$50,000), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

**8.6 Insolvency.** (a) Borrower or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**8.7 Other Agreements.** There is, under any agreement to which Borrower is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of One Hundred Thousand Dollars (\$100,000); or (b) any breach or default by Borrower, the result of which could reasonably be expected to have a material adverse effect on Borrower's business;

**8.8 Judgments; Penalties.** One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars (\$100,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

**8.9 Misrepresentations.** Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

**8.10 Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or

enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement; or

**8.11 Governmental Approvals.** Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could reasonably be expected to result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) cause, or could reasonably be expected to cause, a Material Adverse Change, or (ii) adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

## **9. BANK'S RIGHTS AND REMEDIES**

**9.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.6 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to at least one hundred five percent (105%) of the Dollar Equivalent (or one hundred ten percent (110%) if the Dollar Equivalent is denominated in Foreign Currency) of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit, provided that Bank shall promptly return to Borrower each such cash deposit when the related Letter of Credit terminates without being drawn upon;

(d) terminate any FX Contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.

**9.3 Protective Payments.** If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds Upon Default.** If an Event of Default has occurred and is continuing, Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Bank shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

**9.5 Bank's Liability for Collateral.** So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

## 10. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number (if applicable), or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: WhisperText, Inc.  
69 Windward Avenue  
Venice, California 90291  
Attn: Don McGreal, Vice President of Finance  
Email: [don@whisper.sh](mailto:don@whisper.sh)

With a copy (which shall not constitute notice) to: FENWICK & WEST LLP  
Attn: Ted Wang  
801 California Street  
Mountain View, California 94041  
Telephone: (650) 988-8500  
Email: [twang@fenwick.com](mailto:twang@fenwick.com)

If to Bank: Silicon Valley Bank  
1901 Main Street, Third Floor  
Santa Monica, California 90405  
Attn: Frank O'Brien, Vice President  
Email: [fobrien@svb.com](mailto:fobrien@svb.com)

## 11. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum



non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

This Section 11 shall survive the termination of this Agreement.

## **12. GENERAL PROVISIONS**

**12.1 Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Growth Capital Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

**12.2 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrant, as to which assignment, transfer and other such actions are governed by the terms thereof).

**12.3 Indemnification.** Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

**12.4 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**12.5 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.6 Correction of Loan Documents.** Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

**12.7 Amendments in Writing; Waiver; Integration.** No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

**12.8 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**12.9 Confidentiality.** In handling any confidential information, including but not limited to any confidential information obtained pursuant to any audit, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "**Bank Entities**"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, that any prospective transferee or purchaser shall have entered into an agreement containing provisions substantially the same as those in this Section); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive termination of this Agreement.

**12.10 Attorneys' Fees, Costs and Expenses.** In any action or proceeding between Borrower and Bank arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

**12.11 Electronic Execution of Documents.** The words “execution,” “signed,” “signature” and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**12.12 Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**12.13 Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**12.14 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm’s-length contract.

**12.15 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

### **13. DEFINITIONS**

**13.1 Definitions.** As used in the Loan Documents, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“**Account**” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Debtor**” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“**Affiliate**” is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agreement**” is defined in the preamble hereof.

“**Bank**” is defined in the preamble hereof.

“**Bank Entities**” is defined in Section 12.9.

“**Bank Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrowing Resolutions**” are, with respect to any Person, those resolutions substantially in the form attached hereto as Exhibit D.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“**Cash Equivalents**” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having a rating of at least “investment grade” or “A” by Moody’s or any successor rating agency; and (c) Bank’s certificates of deposit issued maturing no more than one (1) year after issue.

“**Change in Control**” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)), (other than Lightspeed Ventures, Sequoia Capital, and Shasta Ventures) shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of twenty-five percent (25%) or more of the ordinary voting power for the election of directors of Borrower (determined on a fully diluted basis) other than by the sale of Borrower’s equity securities in a public offering or to venture capital or private equity investors so long as

Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100%) of each class of outstanding capital stock of each subsidiary of Borrower free and clear of all Liens (except Liens created by this Agreement).

“**Claims**” is defined in Section 12.3.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “**Code**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account.

“**Commitment Fee**” is defined in Section 2.3(a).

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit B.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly

liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“**Conversion Date**” means, with (a) respect to the Tranche One Growth Capital Advances, the Tranche One Conversion Date and (b) respect to the Tranche Two Growth Capital Advance, the Tranche Two Conversion Date.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Growth Capital Advance, or any other extension of credit by Bank for Borrower’s benefit.

“**Default Rate**” is defined in Section 2.2(b).

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is the multicurrency account denominated in Dollars, account number \*\*\*\*\*878, maintained by Borrower with Bank.

“**Dollars,**” “**dollars**” or use of the sign “**\$**” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “**\$**” sign to denote its currency or may be readily converted into lawful money of the United States.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“**Effective Date**” is defined in the preamble hereof.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, and its regulations.

“**Event of Default**” is defined in Section 8.

“**Exchange Act**” is the Securities Exchange Act of 1934, as amended.

“**Final Payment**” is a payment (in addition to and not a substitution for the regular monthly payments of principal and interest) equal to One Hundred Sixty Thousand Dollars (\$160,000), due on the dates set forth in Section 2.3(c) of this Agreement.

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Foreign Subsidiary**” means a Subsidiary not organized under the laws of the United States or any state or territory thereof or the District of Columbia.

“**Funding Date**” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“**FX Contract**” is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative



functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Growth Capital Advance**” and “**Growth Capital Advances**” is defined in Section 2.1.1(a).

“**Growth Capital Commitment**” is Eight Million Dollars (\$8,000,000).

“**Growth Capital Maturity Date**” is, for each Growth Capital Advance, a date thirty (30) months after the applicable Conversion Date for such Growth Capital Advance, but in no event later than (a) May 1, 2019 for Tranche One, and (b) June 1, 2019 for Tranche Two.

“**Growth Capital Repayment Period**” as to each Growth Capital Advance, is a period of time equal to thirty (30) consecutive months commencing on the Conversion Date of the applicable Growth Capital Advance.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.3.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Intellectual Property**” means, with respect to any Person, means all of such Person’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to such Person;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“**Inventory**” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“**Investment**” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“**Letter of Credit**” is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Warrant, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement by Borrower with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified.

“**Make-Whole Premium**” is an amount equal to (a) One Hundred Sixty Thousand Dollars (\$160,000) if the prepayment is made on or before the first (1<sup>st</sup>) anniversary of the Effective Date and (b) Eighty Thousand Dollars (\$80,000) if the prepayment is made at any time thereafter but prior to the Growth Capital Maturity Date.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or financial condition of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations. In determining whether a “Material Adverse Change” has occurred under clause (b) or (c) above, Bank’s primary, though not sole, consideration will be whether Borrower has or will have sufficient cash resources to repay the Obligations as and when due. Bank recognizes that, as a pre-profit company, Borrower’s cash resources will decline over time, and Borrower will periodically require additional infusions of equity capital. The clear intention of Borrower’s investors to continue to fund Borrower in the amounts and timeframe necessary, in Bank’s judgment, to enable Borrower to satisfy the Obligations as they become due and payable is the most significant criterion Bank shall consider in making any such determination.

“**Monthly Financial Statements**” is defined in Section 6.2(a).

“**Obligations**” are Borrower’s obligations to pay when due any debts, principal, interest, fees, Bank Expenses, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents (other than the Warrant), or otherwise, including, without

limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents (other than the Warrant).

**“Operating Documents”** are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

**“Patents”** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**“Payment/Advance Form”** is that certain form attached hereto as Exhibit C.

**“Perfection Certificate”** is defined in Section 5.1.

**“Permitted Indebtedness”** is:

(a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder; and

(g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

**“Permitted Investments”** are:

- (a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate;
- (b) Investments consisting of Cash Equivalents;
- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;
- (d) Investments consisting of deposit accounts in which Bank has a perfected security interest;
- (e) Investments accepted in connection with Transfers permitted by Section 7.1;
- (f) Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transaction permitted by Section 7.3 of this Agreement, which is otherwise a Permitted Investment;
- (g) Investments (i) by Borrower in Subsidiaries not to exceed Three Hundred Thousand Dollars (\$300,000) in the aggregate in any calendar month and (ii) by Subsidiaries in other Subsidiaries not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate in any fiscal year or in Borrower;
- (h) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower’s Board of Directors;
- (i) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business; and
- (j) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary.

**“Permitted Liens”** are:

- (a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or

recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens and capital leases (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than One Hundred Thousand Dollars (\$100,000) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Fifty Thousand Dollars (\$50,000) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(h) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business;

(i) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.5 and 8.8; and

(j) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that Bank has a perfected security interest in the amounts held in such deposit and/or securities accounts.

**"Permitted Transfer"** is defined in Section 7.1.

**"Person"** is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Prime Rate**” is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the “Prime Rate” shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

“**Registered Organization**” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“**Requirement of Law**” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Responsible Officer**” is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“**Restricted License**” is any material license or other material agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such license or agreement or any other property, or (b) for which a default under or termination of could reasonably be expected to interfere with the Bank’s right to sell any Collateral.

“**SEC**” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“**Securities Account**” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“**Subordinated Debt**” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

“**Subsidiary**” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“**Tranche One**” is defined in Section 2.1.1(a) of this Agreement.

“**Tranche One Commitment Termination Date**” is the earlier to occur of (i) November 30, 2016 or (ii) at Bank’s election, an Event of Default.

“**Tranche One Conversion Date**” is defined in Section 2.1.1(b)(i) of this Agreement.

“**Tranche One Growth Capital Advance**” and “**Tranche One Growth Capital Advances**” is defined in Section 2.1.1(a) of this Agreement.

“**Tranche Two**” is defined in Section 2.1.1(a) of this Agreement.

“**Tranche Two Commitment Termination Date**” is the earlier to occur of (i) December 31, 2016 or (ii) at Bank’s election, an Event of Default.

“**Tranche Two Conversion Date**” is defined in Section 2.1.1(b)(ii) of this Agreement.

“**Tranche Two Growth Capital Advance**” and “**Tranche Two Growth Capital Advances**” is defined in Section 2.1.1(a) of this Agreement.

“**Tranche Two Milestone**” means the date on which Bank receives and approves evidence satisfactory to Bank, in its sole discretion, that Borrower has released its “Places” function that enables location/geographic tagging features.

“**Transfer**” is defined in Section 7.1.

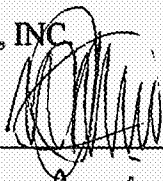
“**Warrant**” is that certain Warrant to Purchase Common Stock dated as of the Effective Date executed by Borrower in favor of Bank, as the same may be amended, modified, supplemented or restated from time to time.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.


BORROWER:

WHISPERTEXT, INC

By   
Name: Mark Troughton  
Title: President

BANK:

SILICON VALLEY BANK

By   
Name: Frank O'Brien  
Title: Vice President

[Signature Page to Loan and Security Agreement]

TRADEMARK  
REEL: 006348 FRAME: 0136



## **EXHIBIT A – COLLATERAL DESCRIPTION**

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law); or (d) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

**EXHIBIT B**

**COMPLIANCE CERTIFICATE**

TO: SILICON VALLEY BANK

Date: \_\_\_\_\_

FROM: WHISPERTEXT, INC.

The undersigned authorized officer of WHISPERTEXT, INC., a Delaware corporation (“Borrower”), certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the “Agreement”):

(1) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below; (2) there are no Events of Default; (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8 of the Agreement; and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under “Complies” column.**

<b><u>Reporting Covenants</u></b>	<b><u>Required</u></b>	<b><u>Complies</u></b>
Monthly financial statements (including key operating metrics) with Compliance Certificate (“CC”)	Monthly within 30 days	Yes No
Annual financial statement (CPA Audited) + CC	FYE within 180 days*	Yes No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
Annual Board Projections and Operating Budget	Within 60 days after FYE and more frequently as updated by Borrower	Yes No

\*Beginning with 2015 FY, if required by Borrower’s Board of Directors; otherwise, company-prepared financial statements are due FYE within 30 days

**Other Matters**

Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, Yes No  
provide copies of any such amendments or changes with this Compliance Certificate.

The following are the exceptions with respect to the certification above: (If no exceptions exist, state “No exceptions to note.”)

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WHISPERTEXT, INC.

**BANK USE ONLY**

27479231v5

**TRADEMARK**  
**REEL: 006348 FRAME: 0138**

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

Received by: \_\_\_\_\_  
AUTHORIZED SIGNER

Date: \_\_\_\_\_

Verified: \_\_\_\_\_  
AUTHORIZED SIGNER

Date: \_\_\_\_\_

Compliance Status:    Yes    No

**EXHIBIT C – LOAN PAYMENT/ADVANCE REQUEST FORM**

**DEADLINE FOR SAME DAY PROCESSING IS NOON PACIFIC TIME**

Fax To: \_\_\_\_\_

Date: \_\_\_\_\_

**LOAN PAYMENT:**

WHISPERTEXT, INC.

From Account # \_\_\_\_\_  
(Deposit Account #)

To Account # \_\_\_\_\_  
(Loan Account #)

Principal \$ \_\_\_\_\_

and/or Interest \$ \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**LOAN ADVANCE:**

Complete Outgoing Wire Request section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # \_\_\_\_\_  
(Loan Account #)

To Account # \_\_\_\_\_  
(Deposit Account #)

Amount of Advance \$ \_\_\_\_\_

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**OUTGOING WIRE REQUEST:**

**Complete only if all or a portion of funds from the loan advance above is to be wired.**

Deadline for same day processing is noon, Pacific Time

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

Amount of Wire: \$ \_\_\_\_\_

Beneficiary Bank: \_\_\_\_\_

Account Number: \_\_\_\_\_

City and State: \_\_\_\_\_

Beneficiary Bank Transit (ABA) #: \_\_\_\_\_

Beneficiary Bank Code (Swift, Sort, Chip, etc.): \_\_\_\_\_

**(For International Wire Only)**

Intermediary Bank: \_\_\_\_\_

Transit (ABA) #: \_\_\_\_\_

For Further Credit to: \_\_\_\_\_

Special Instruction: \_\_\_\_\_

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: \_\_\_\_\_

2<sup>nd</sup> Signature (if required): \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**EXHIBIT D**

**Form of Borrowing Resolutions**

[see attached]



**CORPORATE BORROWING CERTIFICATE**

**BORROWER:** WHISPERTEXT, INC.  
**BANK:** SILICON VALLEY BANK

**DATE:** November \_\_, 2015

I hereby certify as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.
2. Borrower’s exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of Delaware.
3. Attached hereto are true, correct and complete copies of Borrower’s Articles/Certificate of Incorporation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth above. Such Articles/Certificate of Incorporation have not been amended, annulled, rescinded, revoked or supplemented, and remain in full force and effect as of the date hereof.
4. The following resolutions were duly and validly adopted by Borrower’s Board of Directors at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, and Silicon Valley Bank (“Bank”) may rely on them until Bank receives written notice of revocation from Borrower.

**RESOLVED**, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

<u>Name</u>	<u>Title</u>	<u>Signature</u>	Authorized to Add or Remove <u>Signatories</u>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>

**RESOLVED FURTHER**, that **any one** of the persons designated above with a checked box beside his or her name may, from time to time, add or remove any individuals to and from the above list of persons authorized to act on behalf of Borrower.

**RESOLVED FURTHER**, that such individuals may, on behalf of Borrower:

- Borrow Money.** Borrow money from Bank.
- Execute Loan Documents.** Execute any loan documents Bank requires.

**Grant Security.** Grant Bank a security interest in any of Borrower's assets.

**Negotiate Items.** Negotiate or discount all drafts, trade acceptances, promissory notes, or other indebtedness in which Borrower has an interest and receive cash or otherwise use the proceeds.

**Apply for Letters of Credit.** Apply for letters of credit from Bank.

**Enter Derivative Transactions.** Execute spot or forward foreign exchange contracts, interest rate swap agreements, or other derivative transactions.

**Issue Warrants.** Issue warrants for Borrower's capital stock.

**Further Acts.** Designate other individuals to request advances, pay fees and costs and execute other documents or agreements (including documents or agreement that waive Borrower's right to a jury trial) they believe to be necessary to effect these resolutions.

**RESOLVED FURTHER,** that all acts authorized by the above resolutions and any prior acts relating thereto are ratified.

5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

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

\*\*\* If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.

I, the \_\_\_\_\_ of Borrower, hereby certify as to paragraphs 1 through 5 above, as of the date set forth above.

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

# First Amendment to Loan Agreement



**FIRST AMENDMENT TO  
LOAN AND SECURITY AGREEMENT**

THIS FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT (this “**Amendment**”) is entered into this 11<sup>th</sup> day of January, 2017, by and between SILICON VALLEY BANK, a California corporation (“**Bank**”), and WHISPERTEXT, INC., a Delaware corporation (“**Borrower**”).

**RECITALS**

A. Bank and Borrower have entered into that certain Loan and Security Agreement dated as of November 30, 2015 (as the same may from time to time be amended, modified, supplemented or restated, the “**Loan Agreement**”).

B. Bank has previously extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Bank amend the Loan Agreement to (i) defer certain principal payments and (ii) make certain other revisions to the Loan Agreement as more fully set forth herein.

D. Although Bank is under no obligation to do so, Bank is willing to make certain revisions to the Loan Agreement, all on the terms and conditions set forth in this Amendment, so long as Borrower complies with the terms, covenants and conditions set forth in this Amendment.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. Definitions.** Capitalized terms used but not defined in this Amendment, including its preamble and recitals, shall have the meanings given to them in the Loan Agreement.

**2. Amendments to Loan Agreement.**

**2.1 Section 6.8 (Protection of Intellectual Property Rights).** Section 6.8 of the Loan Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

**6.8 Protection and Registration of Intellectual Property Rights.**

(a) (i) Use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property which is material for the conduct of Borrower’s business (other than Intellectual Property which Borrower licenses from one or more third parties); (ii) promptly advise Bank in writing of material

infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property which is material for the conduct of Borrower's business; and (iii) not allow any Intellectual Property material for the conduct of Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) To the extent not already disclosed in writing to Bank, if Borrower (i) obtains any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any Patent or the registration of any Trademark, then Borrower shall immediately provide written notice thereof to Bank and shall execute such intellectual property security agreements and other documents and take such other actions as Bank may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Bank in such property. If Borrower decides to register any Copyrights or mask works in the United States Copyright Office, Borrower shall: (x) provide Bank with at least fifteen (15) days prior written notice of Borrower's intent to register such Copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Bank may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Bank in the Copyrights or mask works intended to be registered with the United States Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the Copyright or mask work application(s) with the United States Copyright Office. Borrower shall promptly provide to Bank copies of all applications that it files for Patents or for the registration of Trademarks, Copyrights or mask works, together with evidence of the recording of the intellectual property security agreement required for Bank to perfect and maintain a first priority perfected security interest in such property.

(c) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Bank requests to attempt to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and if the absence of such Restricted License would have a material adverse effect on Borrower's business, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

## **2.2 Section 13 (Definitions).**

(a) The following definition set forth in Section 13.1 of the Loan Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

“**Loan Documents**” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Warrant, any Bank Services Agreement, the IP Agreement any subordination agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement by Borrower with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified.

(b) The following definition is hereby added in alphabetical order to Section 13.1 of the Loan Agreement:

“**IP Agreement**” is that certain Intellectual Property Security Agreement dated as of January \_\_, 2017, by and between Borrower and Bank, as amended, modified, supplemented or restated.

### **2.3 Deferral of Principal Payments.**

(a) Growth Capital Advances. Notwithstanding anything to the contrary in the Loan Agreement, Bank agrees to defer the principal amount of each payment on the Growth Capital Advances which would otherwise be due and payable on January 1, 2017, February 1, 2017, and March 1, 2017 (collectively, the “**Growth Capital Advance Deferred Principal Payments**”). Borrower shall continue to make monthly interest payments on the outstanding principal balance of the Growth Capital Advances in accordance with the terms set forth in the Loan Agreement. On April 1, 2017, Borrower shall resume making regularly scheduled equal monthly payments of principal, plus interest, in an amount which would fully amortize the aggregate outstanding Growth Capital Advances (including the Growth Capital Advance Deferred Principal Payments) such that the Growth Capital Advances are repaid in full on the Growth Capital Maturity Date.

(b) Deferral Fee. In consideration of Bank’s agreement to defer the Growth Capital Advance Deferred Principal Payments hereunder, Borrower shall pay to Bank a fully earned, non-refundable, fee of Eighty Thousand Dollars (\$80,000) on the earlier to occur of (i) April 1, 2017, (ii) prepayment of the Growth Capital Advances, or (iii) an Event of Default.

**2.4 Grant of Security Interest.** Borrower hereby grants to Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral described on Exhibit A attached hereto, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. All references in the Loan Agreement to Collateral shall be deemed to include the Intellectual Property Collateral (as such term is defined and used in the IP Agreement (as hereinafter defined)).

**2.5 Collateral Description.** Exhibit A of the Loan Agreement is hereby replaced in its entirety with Exhibit A attached hereto. From and after the date hereof, all references in the Loan Agreement to the Collateral described on Exhibit A shall be deemed to refer to the Collateral described on Exhibit A attached hereto.

### **3. Limitation of Amendment.**

**3.1** The amendments set forth in Section 2, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

**3.2** This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

**3.3** In addition to those Events of Default specifically enumerated in the Loan Documents, the failure to comply with the terms of any covenant or agreement contained herein shall constitute an Event of Default and shall entitle Bank to exercise all rights and remedies provided to Bank under the terms of any of the other Loan Documents as a result of the occurrence of the same.

**4. Representations and Warranties.** To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

**4.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date or time period, in which case they are true and correct as of such date or with respect to such time period), and (b) no Event of Default has occurred and is continuing;

**4.2** Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

**4.3** The current organizational documents of Borrower have been delivered to Bank on or prior to the Effective Date, remain true, accurate and complete, have not been amended, supplemented or restated and are and continue to be in full force and effect;

**4.4** The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

**4.5** The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

**4.6** The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

**4.7** This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**5. Integration.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

**6. Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**7. Effectiveness.** This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by each party hereto, (b) the due execution and delivery to Bank of the Intellectual Property Security Agreement (the "**IP Agreement**"), dated of even date herewith, by and between Borrower and Bank, (c) a UCC Financing Statement amendment adding the Intellectual Property Collateral to the Collateral, (d) Bank's receipt of evidence satisfactory to Bank that Borrower has received net proceeds from an equity financing of Borrower or Subordinated Debt in an aggregate amount of not less than Four Million Dollars (\$4,000,000), and (e) payment of Bank's legal fees and expenses in connection with the preparation and negotiation of this Amendment and the IP Agreement.

[Signature page follows.]

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

**BORROWER:**

WHISPERTEXT, INC.

By:   
Name: Michael Heyward  
Title: Chief Executive Officer

**BANK:**

SILICON VALLEY BANK

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

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

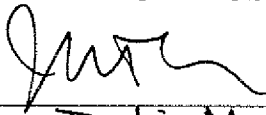
**BORROWER:**

WHISPERTEXT, INC.

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

**BANK:**

SILICON VALLEY BANK

By:  \_\_\_\_\_  
Name: Justin March  
Title: Vice President

## **EXHIBIT A – COLLATERAL DESCRIPTION**

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).



# Exhibit E

## INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this “**Agreement**”) is entered into as of January 11, 2017 by and between SILICON VALLEY BANK, a California corporation (“**Bank**”), and WHISPERTEXT, INC., a Delaware corporation (“**Grantor**”).

### RECITALS

A. Bank has agreed to make certain advances of money and to extend certain financial accommodation to Grantor (the “**Loans**”) in the amounts and manner set forth in that certain Loan and Security Agreement by and between Bank and Grantor, dated as of March 13, 2014 (as the same may be amended, modified or supplemented from time to time, the “**Loan Agreement**”; capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement).

B. Pursuant to the terms of the First Amendment to Loan and Security Agreement by and between Bank and Grantor dated as of even date herewith (the “**First Amendment**”), Grantor has agreed to amend the Loan Agreement and grant to Bank a security interest in all of Grantor’s right, title and interest, whether presently existing or hereafter acquired, in, to and under all of the Collateral. Bank is willing to enter into the First Amendment, but only upon the condition, among others, that Grantor shall grant to Bank a security interest in certain Copyrights, Trademarks, Patents, and Mask Works (as each term is described below) to secure the Obligations of Grantor pursuant to the Loan Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, as collateral security for the prompt and complete payment when due of its Obligations under the Loan Agreement, Grantor hereby represents, warrants, covenants and agrees as follows:

### AGREEMENT

1. Grant of Security Interest. To secure its Obligations under the Loan Agreement, Grantor grants and pledges to Bank a security interest in all of Grantor’s right, title and interest in, to and under its intellectual property (all of which shall collectively be called the “**Intellectual Property Collateral**”), including, without limitation, the following:

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the “**Copyrights**”);

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights that may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto and any patents and patent applications claiming the priority benefit of the patents and patent applications set forth on Exhibit B attached hereto (collectively, the “**Patents**”);

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the “**Trademarks**”);

(f) All mask works or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired, including, without limitation those set forth on Exhibit D attached hereto (collectively, the “**Mask Works**”);

(g) Any and all claims for damages by way of past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(h) All licenses or other rights to use any of the Copyrights, Patents, Trademarks, or Mask Works and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(i) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents, or Mask Works; and

(j) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Recordation. Grantor authorizes the Commissioner for Patents, the Commissioner for Trademarks and the Register of Copyrights and any other government officials to record and register this Agreement upon request by Bank.

3. Authorization. Grantor hereby authorizes Bank to (a) modify this Agreement unilaterally by amending the exhibits to this Agreement to include any Intellectual Property Collateral which Grantor obtains subsequent to the date of this Agreement, and (b) file a duplicate original of this Agreement containing amended exhibits reflecting such new Intellectual Property Collateral.

4. Loan Documents. This Agreement has been entered into pursuant to and in conjunction with the First Amendment and the Loan Agreement, which are hereby incorporated by reference. The provisions of the Loan Agreement shall supersede and control over any conflicting or inconsistent provision herein. The rights and remedies of Bank with respect to the Intellectual Property Collateral are as provided by the Loan Agreement and related documents, and nothing in this Agreement shall be deemed to limit such rights and remedies.

5. Execution in Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart of this Agreement.

6. Successors and Assigns. This Agreement will be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

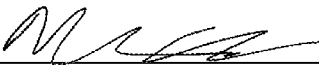
7. Governing Law. This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the laws of the United States and the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

[Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:

WHISPERTEXT, INC.

By:  \_\_\_\_\_  
Name: Michael Heyward  
Title: Chief Executive Officer

BANK:

SILICON VALLEY BANK

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

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:

WHISPERTEXT, INC.

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

BANK:

SILICON VALLEY BANK

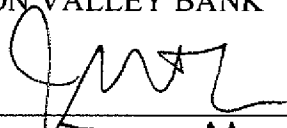
By:  \_\_\_\_\_  
Name: Justin Mauch  
Title: Vice President

EXHIBIT A

Copyrights

Description	Registration Number	Application Number
None		

EXHIBIT B

Patents

Description	Application Number	Registration Number
System and Method for Automatically Selecting Images to Accompany Text		9,075,812 (07/07/2015)
System and Method for Selecting Sponsored Images to Accompany Text		9,286,326 (03/15/2016)
System and Method for Automatically Selecting Images to Accompany Text		9,384,288 (07/05/2016)
System and Method for Selecting Sponsored Images to Accompany Text	15/010,832 (01/29/2016)	
System and Method for Automatically Selecting Images to Accompany Text	15/170,755 (06/01/2016)	
System and Method for Selecting Social Media Posts Based on Geographic Location	14/814,144 (07/30/2015)	



EXHIBIT C

Trademarks

Description	Serial Number	Registration Number
W (& design)	86/629,522 (05/14/2015)	

EXHIBIT D

Mask Works

Description	Application	Registration
None		

# Exhibit F

Assignment of Intellectual Property  
Security Agreement

**ASSIGNMENT OF INTELLECTUAL PROPERTY  
SECURITY AGREEMENT**

This **ASSIGNMENT OF INTELLECTUAL PROPERTY SECURITY AGREEMENT** (this "Assignment"), dated as of July 13, 2017, is by **SILICON VALLEY BANK** (individually, "SVB"), acting in its capacity as the current and resigning lender (in such capacity, the "Retiring Lender"), and **WHISPERTEXT INVESTMENT LLC** (individually, "WhisperText"), acting in its capacity as the successor lender (in such capacity, the "Successor Lender").

**RECITALS:**

**WHEREAS**, WhisperText, Inc. as "Grantor", and Retiring Lender are party to that certain Intellectual Property Security Agreement referenced on Exhibit A (as the same have been and may hereafter be amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), covering certain intellectual property set forth on Exhibit B attached hereto; and

**WHEREAS**, pursuant to that certain Non-Recourse Loan Document Sale and Assignment Agreement by and between SVB, as the Retiring Lender, and WhisperText, as Successor Lender, Retiring Lender has assigned to Successor Lender all of its rights, remedies, duties and other obligations under, among other documents, the Agreement, in each instance, in its capacity as lender.

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Retiring Lender hereby assigns and transfers to Successor Lender and its successors and assigns, all of its rights, title and interest in and to the Agreement.

This Assignment may be executed in any number of counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same instrument.

*- Remainder of Page Intentionally Left Blank; Signature Page Follows -*

IN WITNESS WHEREOF, Retiring Lender and Successor Lender have caused this Assignment to be duly executed as of the date first above written.

**RETIRING LENDER:**

**SILICON VALLEY BANK**

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

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

Title: Duly Authorized Signatory

*Head of Advisory Services*

**SUCCESSOR LENDER:**

**WHISPertext INVESTMENT LLC**

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

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

Title: Duly Authorized Signatory

**TRADEMARK**

**REEL: 006348 FRAME: 0166**

IN WITNESS WHEREOF, Retiring Lender and Successor Lender have caused this Assignment to be duly executed as of the date first above written.

**RETIRING LENDER:**

**SILICON VALLEY BANK**

By: \_\_\_\_\_  
Name:  
Title: Duly Authorized Signatory

**SUCCESSOR LENDER:**

**WHISPERTEXT INVESTMENT LLC**

By: Brad Brooks  
Name: Brad Brooks  
Title: Duly Authorized Signatory

EXHIBIT A

1. Intellectual Property Security Agreement dated January 11, 2017 and recorded with the United States Patent and Trademark Office on January 12, 2017 at Reel 5964, Frame 0675 against the trademark and Reel 040960, Frame 0640 against the patents.



EXHIBIT B

TRADEMARKS

<u>Mark</u>	<u>Serial/Registration Number</u>	<u>Filing/Registration Date</u>
W (& design)	86/629,522	05/14/2015

PATENTS

<u>Title</u>	<u>App. No./Patent No.</u>	<u>Filing/Issuance Date</u>
System and Method for Automatically Selecting Images to Accompany Text	9,075,812	07/07/2015
System and Method for Selecting Sponsored Images to Accompany Text	9,286,326	03/15/2016
System and Method for Automatically Selecting Images to Accompany Text	9,384,288	07/05/2016
System and Method for Selecting Sponsored Images to Accompany Text	15/010,832	01/29/2016
System and Method for Selecting Sponsored Images to Accompany Text	15/170,755	06/01/2016
System and Method for Selecting Social Media Posts Based on Geographic Location	14/814,144	07/30/2015

COPYRIGHTS

None.

MASK WORKS

None.

Loan Document Sale and  
Assignment Agreement

## NON-RECOURSE LOAN DOCUMENT SALE AND ASSIGNMENT AGREEMENT

**THIS NON-RECOURSE LOAN DOCUMENT SALE AND ASSIGNMENT AGREEMENT** (this "Agreement") is made on July 13, 2017, by and among Silicon Valley Bank ("Assignor") and WhisperText Investment LLC, a Delaware limited liability company ("Assignee").

### RECITALS

A. Assignor is a party to a certain Loan and Security Agreement dated as of November 30, 2015, by and between Assignor and WhisperText, Inc., a Delaware corporation ("Borrower") (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") and certain related documents which evidence the loans, grant of security interest and associated agreements which are listed on Exhibit "A" attached hereto and are incorporated herein by this reference (together with the Loan Agreement, collectively referred to herein as the "Loan Documents"). Pursuant to the Loan Documents, Borrower granted Assignor a security interest in substantially all of Borrower's assets, including, but not limited to, Borrower's equipment, inventory, contract rights and general intangibles, accounts, cash, and intellectual property rights. Capitalized terms used herein but not defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

B. Assignee and Assignor desire for Assignee to purchase, accept and assume from Assignor, and for Assignor to sell and assign to Assignee, the "Assigned Interest" (as defined herein) in consideration of Assignee's payment of the "Purchase Price" (as defined herein). The aggregate outstanding amount owed by Borrower to Assignor under the Loan Documents being assigned hereby is \$8,076,682.19 as of June 30, 2017, determined in accordance with Assignor's books and records.

C. Assignor desires to transfer to Assignee the Assigned Interest subject to the terms and conditions set forth herein.

### AGREEMENT

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

1. **Payment of Purchase Price.** On or before July 13, 2017, Assignee shall pay to Assignor the sum of \$4,100,000.00 (the "Purchase Price"), which amount represents the aggregate outstanding principal, interest, fees and expenses owing from Borrower to Assignor pursuant to the Loan Documents.

The Purchase Price shall be paid to Assignor by federal funds wire transfer or account transfer from an account at Silicon Valley Bank, using the following instructions:

Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95054

ABA # 1211400399  
Account No.: 1130560  
ATTN: Loan Processing re Whispertext Note Sale

2. **Assignment of Loan Documents.** Effective upon Assignor's receipt of: (a) this Agreement duly executed by Assignee, and (b) the entire Purchase Price, paid as set forth in Section 1, Assignor hereby grants, assigns, conveys, transfers and sets over to Assignee, and Assignee hereby irrevocably accepts and assumes, (x) all of Assignor's right, title, interest, obligations in, to and under all of the Loan Documents and its rights and remedies thereunder (including, without limitation, its rights as "Bank" under and as defined in the Loan Documents), and (y) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right Assignor (in its capacity as "Bank" (as defined in the Loan Agreement)) against any person or entity, whether known or unknown, arising under or in connection with the Loan Documents or the loan transactions governed thereby or in any way related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or equity related to the right, title, interest and obligations sold and assigned and assumed pursuant to clause (x) above and (z) any and all Liens in the Collateral granted to the Assignor under any Loan Document (the right, title, interest and obligations, and the claims, suits, causes of action and other rights sold and assigned by Assignor to Assignee pursuant to clauses (x), (y) and (z) above being referred to herein collectively as the "Assigned Interest"). Promptly upon the satisfaction of the conditions set forth in the immediately preceding sentence, Assignor shall: (i) deliver to Assignee copies of each of the Loan Documents in Assignor's possession, any possessory collateral related to the Loan Documents, and an amendment (which shall be in form and substance reasonably satisfactory to Assignee and attached hereto as Exhibit "B") to each Uniform Commercial Code Financing Statement identified on Exhibit "A" which confirms the assignment herein, and Assignor hereby agrees that upon such delivery Assignee shall be authorized to file same; and (ii) execute any other documents Assignee reasonably requests to facilitate Assignee's purchase, acceptance and assumption from Assignor, and Assignor's sale and assignment to Assignee, of all of the Assigned Interest at the Assignee's sole cost and expense. The sale and assignment of the Assigned Interest pursuant to this Agreement is made WITHOUT RECOURSE to Assignor and WITHOUT ANY REPRESENTATION AND WARRANTY OF ANY KIND by Assignor except as expressly set forth in Section 5.

3. **Scope of Assigned Loan Documents.** Assignee hereby expressly acknowledges and agrees that this Agreement is effective as to the Loan Documents referenced on Exhibit "A".

4. **Acceptance of Assignment.** Assignee hereby irrevocably accepts and assumes the Assigned Interest set forth in Section 2, subject to the limitations set forth in Section 3.

5. **Assignor's Representations.** Assignor represents, warrants, and covenants to Assignee that, as of the date hereof: (a) Assignor is a California state-chartered bank, duly organized, validly existing and in good standing under the laws of the State of California; (b) the execution by Assignor of this Agreement and the performance by Assignor of Assignor's obligations hereunder, respectively, (i) have been duly authorized by all requisite corporate action, and (ii) will not violate any order of any court or governmental agency or any agreement by which Assignor is bound; (c) Assignor is the sole legal and beneficial owner of the Assigned

Interest, and has the full right to sell, transfer, assign and deliver to Assignee the Assigned Interest free and clear of any Liens; (d) Assignor has not previously assigned or conveyed any of its right, title, interest or obligations in the Assigned Interest; (e) to the Assignor's knowledge Exhibit "A" sets forth all of the Loan Documents; (f) the aggregate outstanding principal, interest, fees and expenses owing from Borrower to Assignor pursuant to the Loan Documents is \$8,076,682.19; (g) to the best of its knowledge, Assignor has no indemnification or expense claims against the Borrower that have arisen as of the date hereof that are not included in the Purchase Price.

6. **Exclusion of Assignor's Warranties and Representations.** Except as specifically provided in Section 5, this Agreement is made by Assignor without any representations or warranties whatsoever, whether expressed, implied or imposed by law. Without limiting the generality of the foregoing total exclusion of representations and warranties, this Agreement is made:

**WITHOUT** any representations or warranties with respect to the genuineness of any signature other than those made by or on behalf of Assignor.

**WITHOUT** any representations or warranties with respect to the collectability of any amount owed by Borrower under any of the Loan Documents.

**WITHOUT** any representations as to the financial condition of Borrower.

**WITHOUT** any of the representations or warranties described in Article 3 of the Uniform Commercial Code as enacted in the State of California.

**WITHOUT** any representations or warranties with respect to the legality, validity, completeness, accuracy, sufficiency or enforceability of any of the Loan Documents.

**WITHOUT** any representations or warranties with respect to the validity, enforceability, attachment, priority, or perfection of any security interest, attachment, relief, or encumbrance, included in the Loan Documents, or the compliance with applicable law of any proceedings commenced or followed by Assignor with respect to Assignor's loan and security arrangements with Borrower.

**WITHOUT** any representations or warranties with respect to the existence, value, access to or condition of any collateral granted (or purported to be granted) to Assignor under the Loan Documents, including, without limitation, as to any environmental matters (including, without limitation as to the existence of any hazardous materials).

7. **Assignee's Acknowledgment.** Assignee acknowledges the foregoing total exclusion of representations and warranties and further acknowledges and agrees that except as specifically provided in Section 5, Assignor has not made any representations or warranties whatsoever.

8. **No Endorsement.** This Agreement does not constitute an endorsement by Assignor of the Loan Documents. Any attempt to affix this Agreement to the Loan Documents shall be without force or effect to alter the nature of this Agreement.

9. **Representations by Assignee.** Assignee represents, warrants and covenants the following:

- (a) Assignee has determined to enter this Agreement and to purchase the Assigned Interest following Assignee's own independent review and inspection of whatever matters Assignee deemed necessary or appropriate, including, without limitation, an independent investigation and evaluation as to the facts and circumstances relating to this Agreement, including transactions related to the Loan Documents, and not in reliance upon any information provided by Assignor.
- (b) Assignee has entered into this transaction after consultation with independent counsel of Assignee's own selection, and, with the sole exception of the representations and warranties specifically made in Section 5 herein, is not relying upon any representation or warranty of Assignor in consummating this transaction.
- (c) Assignee (i) is a sophisticated entity with respect to the purchase of the Assigned Interest, (ii) is able to bear the economic risk associated with the purchase of the Assigned Interest, and (iii) has such knowledge and experience, and has made purchases and investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the purchase of the Assigned Interest contemplated by this Agreement.
- (d) The execution by Assignee of this Agreement and the performance by Assignee of Assignee's obligations hereunder respectively, have been duly authorized to the extent necessary, and will not violate any contract or order of any court or governmental agency or any agreement by which Assignee is bound.
- (e) Assignee has purchased the Assigned Interest for Assignee's own account, and not with a view to resale.
- (f) Assignee has done a full, complete and exhaustive independent evaluation and investigation into the status of Borrower without reliance on Assignor, and into the status of any collateral which purportedly secures Borrower's obligations under the assigned documents, including, without limitation, Borrower's financial status and the condition or value of the collateral purportedly granted under any of the Loan Documents.
- (g) No interest in the Assigned Interest is being acquired by or on behalf of an entity that is, or at any time while the Assigned Interest is held thereby, a Benefit Plan. For purposes of this Agreement, a "Benefit Plan" is defined as (i) an "employee benefit plan" as defined by the Employee Retirement

Income Security Act of 1974, as amended, and the rules and regulations promulgated under it (collectively, "ERISA") that it subject to Title I of ERISA, (ii) a "plan" as defined in Section 4975 of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated under it (collectively, the "IRC"), or (iii) any entity whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA of or Section 4975 of the IRC) the assets of any such "employee benefit plan" or "plan."

10. It is the sole and exclusive responsibility of Assignee, at Assignee's cost, to assert and defend (to the extent necessary) any and all claims arising under the Loan Documents.

11. **Waiver.** Assignee represents, warrants, and covenants that Assignee has no claims, rights, or recourse against Assignor arising from or in any way related to this Agreement or the Loan Documents, except with respect to the obligations of Assignor created by, acknowledged, or arising out of this Agreement. To the extent Assignee has or may have any claims, rights, or recourse against Assignor with respect to the Loan Documents including, without limitation, any claims, rights or recourse as Creditor under the Subordination Agreement dated June 16, 2017 identified on Exhibit "A" (other than obligations created by, acknowledged, or arising out of this Agreement), Assignee fully releases Assignor from and against any and all liability, and intends this Agreement to be a full and final accord and satisfaction of any such claims, rights, or recourse, known or unknown, and acknowledges that Assignee is familiar with Section 1542 of the California Civil Code, and hereby waives and relinquishes any right or benefit Assignee has or may have under Section 1542 of the California Civil Code, or similar law, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

12. **Indemnification.**

- (a) Assignor hereby agrees to indemnify and hold Assignee harmless of and from liabilities, claims or expenses (including reasonable expenses in connection with defending indemnified claims) arising out of, or in connection with this Agreement or any of the Loan Documents, but only to the extent that such liabilities, claims or expenses (i) have been determined by final nonappealable adjudication to have resulted from Assignor's gross negligence or willful misconduct; or (ii) arise out of a breach of any of Assignor's representations, warranties or covenants set forth in Section 5 of this Agreement, including in connection with Assignor's performance of its obligations under this Agreement.
- (b) Assignee hereby agrees to indemnify, defend, and hold Assignor and SVB Financial Group, and any of their respective affiliates, employees, officers, directors, attorneys, or agents (each, an "Indemnified Person") harmless of

and from (i) any claim, lawsuit or other action, brought or threatened against any Indemnified Person by Borrower, any creditor of Borrower, any equity holder in Borrower, any guarantor or endorser of Borrower's obligations (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of, relating to, or arising out of any of Assignee's representations, warranties or covenants set forth in this Agreement (ii) the face amount of any check or automated clearinghouse transfer that is hereafter dishonored or returned to Assignor in connection with the Loan Documents or remains unpaid for any reason plus any bank charges and all other reasonable costs incurred by Assignor that arise as a result of any such dishonor or return, and (iii) any breach by Assignee of the duties, liabilities and obligations it is assuming under the Assigned Interests or the Loan Documents. Any such claim, lawsuit or other action may be defended, compromised, settled (which settlement must be with the consent of Assignee, which consent will not be unreasonably withheld), or pursued by the Indemnified Person with counsel of Assignee's selection (such selection of counsel subject to Assignor's prior written approval, which approval shall not be unreasonably withheld), but at the sole cost and expense of Assignee; provided, however, that the Indemnified Person may also employ other or additional counsel at its sole cost and expense. Assignee, by executing this Agreement where indicated below, acknowledges and agrees that Assignee's liability and obligations under this Section 12 shall continue in full force and effect until the earlier of these two events: (i) the specific termination of such liability and obligations in writing by a duly authorized officer of Assignor or (ii) (except with respect to claims, lawsuits or other actions already asserted or filed against an Indemnified Person) the expiration of 4 years from the effective date of this Agreement, or in the event of an allegation that the "discovery rule" applies, 4 years from the date of the alleged "discovery" of the claim, lawsuit or other action.

13. **Further Assurances.** Assignor and Assignee shall execute, acknowledge, file, and record such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement, including, without limitation, (a) the termination or amendment of any of the Loan Documents and any credit agreements, security agreements, intellectual property security agreements, guarantees, bailee waivers, assignments or conveyances related to the foregoing or any other documents necessary or desirable to transfer the rights and privileges of the Assignor to the Assignee, (b) making or causing to be made all reasonably requested filings and taking all other actions reasonably requested that are necessary or desirable to maintain the validity, perfection and priority of the Liens on the Collateral in favor of the Assignee, (c) if, following the date hereof, Assignor receives any payment against the Obligations (other than the Purchase Price from Assignee), the prompt delivery by Assignor to Assignee of any such payment received, at the Assignee's expense and as directed by Assignee, and (d) executing all mutually acceptable documents, as may be reasonably requested by the Assignee to transfer the rights and privileges of the Assignor under the Loan Documents, including, without limitation, the execution, delivery and filing of any financing statements, credit agreements, security agreements, intellectual



property security agreements, guarantees, bailee waivers, any assignments or conveyances related to the foregoing or any other documents necessary or desirable to transfer the rights and privileges of the Assignor to the Assignee. Upon satisfaction of the conditions set forth in Section 2(a) and (b), Assignee is hereby authorized by the parties hereto to file Uniform Commercial Code financing statements, terminations or amendments, intellectual property security agreements, or amendments thereto or terminations thereof, control agreement terminations, collateral access terminations and any other agreements, amendments or releases necessary or desirable to evidence Assignor's grant, assignment, transfer or conveyance of the Assigned Interest to Assignee.

14. **Attorneys' Fees.** Subject to the terms of the Indemnification provision above, should any party hereto reasonably retain counsel for the purposes of enforcing or preventing the breach of any provision hereof, including, but not limited to, the instituting of any action or proceeding to enforce any provision hereof, for damages for reason of any alleged breach of any provision hereof, for declaration of such party's rights or obligations hereunder, or for any other judicial or equitable remedy, then, if said matter is settled by judicial determination (which term includes arbitration), the prevailing party, whether at trial or on appeal, shall be entitled to reimbursement by the losing party to the prevailing party for all costs and expenses incurred thereby, including, but not limited to reasonable attorneys', accountants' and appraisers' fees.

15. **Binding on Heirs and Successors; Further Transfers.** This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto. Notwithstanding the foregoing, Assignee may sell, assign, grant a participation in, or otherwise transfer all or any portion of the Assigned Interest, this Agreement, its rights under this Agreement, or any interest in any of the foregoing without the consent of or notice to the Assignor; *provided, however,* (a) Assignee's obligations to Assignor under this Agreement shall remain in full force and effect until fully paid, performed, and satisfied, (b) Assignor shall continue to deal solely and directly with Assignee in connection with Assignee's obligations under this Agreement, and (c) with respect to a transfer by Assignee of its rights against Assignor under this Agreement, the transferee must represent and warrant no transferred interest is being acquired by the transferee by or on behalf of an entity that is, or at any time while the transferred interest is held thereby will be, one or more Benefit Plans.

16. **Entire Agreement; Modification, Waiver.** This Agreement contains the entire agreement of the parties relating to the subject matter hereof. Any oral representations, supplements or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

17. **Governing Law and Jurisdiction.** The parties hereto agree that this Agreement shall be governed exclusively under and in accordance with the laws of the State of California, irrespective of conflicts of laws principles. The parties hereto each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California, in connection with any and all disputes and causes of action between them arising from or relating to this Agreement.

18. **Execution; Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page hereof by facsimile transmission or by electronic transmission (such as PDF or other electronic means) shall be effective as delivery of a manually executed counterpart hereof.

19. **Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns.

20. **Invalidity.** In the event that any condition, covenant, promise, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant, promise, condition, or other provision herein contained. If such condition, covenant, promise, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

21. **Exhibits and Schedules.** All Exhibits referred to herein are hereby attached hereto and incorporated herein by this reference with the same force and effect as if fully set forth herein.

22. **Disclosure; Confidentiality.** Each party agrees that, without the prior written consent of the other party, it shall not disclose the contents of this Agreement to any person or entity, except that a party may make any such disclosure (a) as required to implement or enforce this Agreement, (b) if required to do so by any law, court, regulation, subpoena, or other legal process, (c) if its attorneys advise it that it has a legal obligation to do so or that failure to do so may result in it incurring liability to any other person or entity, (d) to its respective affiliates and the directors, officers, employees, agents, advisors, counsel and auditors or such party and of such party's affiliates. Assignee may disclose the contents of this Agreement to any proposed transferee, assignee, participant, or other entity proposing to enter into contractual relations with Assignee in respect of the Assigned Interest or any part of it. Assignee agrees to comply with the requirements of the Loan Documents regarding confidentiality.

23. **Notices.** All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and five (5) days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Assignor or Assignee may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 23.

If to Assignor: Silicon Valley Bank  
15260 Ventura Blvd., Suite 1800

Sherman Oaks, CA 91403  
Attn: Justin Mauch  
Fax: 818-783-7984  
Email: JMauch@svb.com

If to Assignee: Whispertext Investment LLC  
69 Windward Avenue  
Venice, CA 90291  
Attn: Brad Brooks  
Email: brad@whisper.com

24. **Agency.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any other association. Each of the parties hereto expressly disclaims any intention to create a partnership, joint venture, or principal-agent relationship.

25. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CLAIMS BASED ON CONTRACT, TORT, BREACH OF DUTY AND ANY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure § 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery

applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure Section 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

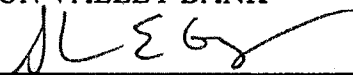
This Section 25 shall survive the termination of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

ASSIGNOR:

SILICON VALLEY BANK

By:   
Name: Shawn E Goodman  
Title: Head of Advisory Services

ASSIGNEE:

WHISPERTEXT INVESTMENT LLC

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

*Signature Page to Non-Recourse Sale and Assignment Agreement*

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.


ASSIGNOR:

SILICON VALLEY BANK

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

ASSIGNEE:

WHISPERTEXT INVESTMENT LLC

By:  \_\_\_\_\_  
Name: Brad Brooks  
Title: Duly Authorized Signatory

*Signature Page to Non-Recourse Sale and Assignment Agreement*

Exhibit A  
Loan Documents

Loan and Security Agreement dated as of November 30, 2015  
Corporate Borrowing Certificate  
Consent to Removal of Personal Property (Scott Spector) dated November \_\_\_\_, 2015  
UCC-1 Financing Statement No. 20155687560 recorded December 1, 2015  
Subordination Agreement (various creditors) dated July 22, 2016  
First Amendment to Loan and Security Agreement dated January 11, 2017  
Intellectual Property Security Agreement dated January 11, 2017  
Second Amendment to Loan and Security Agreement dated April 20, 2017  
Subordination Agreement (Whispertext Investment LLC) dated June 16, 2017

Exhibit B  
Uniform Commercial Code Financing Statement Amendment

[See Attached]



**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Robin Dunn 310-471-3000	
B. E-MAIL CONTACT AT FILER (optional) rdunn@lsl-la.com	
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Levy, Small & Lallas 815 Moraga Drive Los Angeles, CA 90049	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER  
20155687560 12/1/2015

1b.  This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS  
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3.  ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9  
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5.  PARTY INFORMATION CHANGE:

Check one of these two boxes:

AND Check one of these three boxes to:

This Change affects  Debtor or  Secured Party of record

CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c

ADD name: Complete item 7a or 7b, and item 7c

DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

WhisperText Investment LLC

OR 7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7c. MAILING ADDRESS

69 Windward Avenue

CITY

Venice

STATE

CA

POSTAL CODE

90291

COUNTRY

US

8.  COLLATERAL CHANGE: Also check one of these four boxes:  ADD collateral  DELETE collateral  RESTATE covered collateral  ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)  
If this is an Amendment authorized by a DEBTOR, check here  and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

Silicon Valley Bank

OR 9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

Filed w/ DE-SOS; Debtor: WhisperText, Inc.

F#582298

A#806984

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (Form UCC3) (Rev. 04/20/11) International Association of Commercial Administrators (IACA)

**TRADEMARK**  
**REEL: 006348 FRAME: 0185**

# Exhibit G

## ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this “**Agreement**”) is made and entered into as of May 10, 2018, by and between Whispertext Investment LLC, a Delaware limited liability company (“**Assignor**”), and Whispertext Equity Investment, LLC, a Delaware limited liability company and affiliate of Assignor (“**Assignee**”, with Assignor, each a “**Party**,” and collectively, the “**Parties**”).

### RECITALS

A. On or about November 30, 2015, WhisperText, Inc. (the “**Company**”), a Delaware corporation, as borrower, entered into that certain Loan and Security Agreement and related financing documents (collectively, and as have been amended and/or modified, the “**Secured Debt**”) with Silicon Valley Bank, a California corporation, as lender (“**SVB**”). The Secured Debt is secured by a perfected senior lien on substantially all of the assets of the Company, as more particularly described in the Secured Debt documents and related filings and recordings.

B. On or about July 13, 2017, SVB assigned to Assignor all of its right, title, interest and obligations under the Secured Debt, pursuant to that certain Non-Recourse Loan Document Sale and Assignment Agreement dated July 13, 2017.

C. Assignor, the sole member of Assignee, desires to assign and contribute to Assignee all of Assignor’s right, title, interest and obligations under the Secured Debt, along with all accrued interest and any other amounts due and owing thereon, and any other rights therein, and Assignee desires to accept such assignment, all in accordance with the terms of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. Assignment. Assignor hereby irrevocably grants, assigns, transfers, conveys and delivers to Assignee all of Assignor’s right, title and interest in and to the Secured Debt, including, without limitation, the rights to complete the pending foreclosure, to credit bid all amounts due at the foreclosure and the right to receive payment of all amounts received at the foreclosure together with payments due and owing thereon, and any other rights and obligations therein and with respect thereto. Assignee hereby accepts such assignment of the Secured Debt.

2. Representations and Warranties of Assignor. Assignor represents and warrants to the Assignee that Assignor is the sole and rightful owner of the Secured Debt, free and clear of any mortgage, lien, pledge, charge, security interest or encumbrance of any kind whatsoever, and has not transferred or assigned the Secured Debt, or any interest therein, except as set forth expressly herein.

3. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of the respective Parties hereto.


4. Governing Law. This Assignment shall be governed by and construed under the laws of the State of California without regard for conflicts of laws principles.

5. Further Assurances. Each Party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.


6. Acknowledgement of the Company. By its signature below, the Company hereby acknowledges the terms, conditions, validity and enforceability of this Agreement and of the assignment of the Secured Debt made herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

WHISPERTEXT INVESTMENT LLC,  
as Assignor

By:   
Name: Vikas Tandon  
Title: Manager

WHISPERTEXT EQUITY INVESTMENT, LLC  
as Assignee

By:   
Name: Vikas Tandon  
Title: Manager

ACKNOWLEDGED AND AGREED:

WHISPERTEXT, INC.  
By:   
Name: Michael Heyward  
Title: CEO

# Exhibit H

## **Exhibit H**

### **VERIFIED STATEMENT OF ASSIGNMENT OF PATENTS AND TRADEMARKS THROUGH STATE PUBLIC FORECLOSURE SALE**

I, Vikas Tandon, Manager of WhisperText Equity Investment, LLC, a Delaware limited liability company (“Secured Party”), am an authorized representative of Secured Party and am authorized to make the statements made herein. Secured Party conducted a foreclosure sale of substantially all of the assets of WhisperText, Inc., a Delaware corporation (“Debtor”), on May 11, 2018 (“Foreclosure Sale”). Those assets included the Foreclosed Patents and Foreclosed Trademarks listed on, respectively, Schedule 1 and Schedule 2 of the Assignment of Patents and Trademarks Through State Public Foreclosure Sale (the “Assignment”). Prior to the Foreclosure Sale, Secured Party held a perfected security interest in substantially all of the assets of the Debtor, as an assignee of WhisperText Investment LLC, a Delaware limited liability company, which was an assignee of Silicon Valley Bank, a California corporation and lender to the Debtor. I personally participated in the Foreclosure Sale. I also personally endorsed Notice of Sale and Notice of Completion, each as defined in the Assignment (a duplicate of each notice is attached hereto). The Foreclosure Sale was conducted under the requisite Article 9 secured transactions uniform commercial code provisions of the laws of the State of California and under other applicable statutes in connection with Secured Party’s prior perfected and secured claim in the Debtor’s assets. By the Assignment, Secured Party is requesting that the Patent and Trademark office transfer the Foreclosed Patents and Foreclosed Trademarks from Debtor to Secured Party.

Dated: June 5, 2018

WhisperText Equity Investment, LLC

By: 

Name: Vikas Tandon

Title: Manager and Authorized Representative of  
Secured Party

# Notice of Foreclosure Sale

## NOTICE OF SALE AND DISPOSITION OF COLLATERAL

**To:** WhisperText, Inc. (“**Borrower**”)

**ADDRESSES FOR BORROWER AND RELATED PARTIES ON  
EXHIBIT B**

**From:** Whisertext Investment LLC (“**Secured Party**”)

**Sale Date:** May 11, 2018

**Time:** 10:00 a.m. (PDT)

**Place:** Stradling Yocca Carlson & Rauth, P.C.  
100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401

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This Notice of Sale and Disposition of Collateral (“**Notice**”) is given pursuant to the California Uniform Commercial Code, and any other applicable law (collectively, the “**UCC**”). On the date, time and place set forth above, Secured Party or its designee/assignee will offer at public auction sale (the “**Sale**”) the Collateral (as defined below). Such Collateral consists of all rights title and interest of Borrower, and properties and assets, owned or purported to be owned by the Borrower, of every kind, real, personal and mixed, tangible or intangible, and all as more particularly described on Exhibit A (the “**Collateral**”).

**PLEASE NOTE THAT THE SECURED PARTY RESERVES THE RIGHT TO BID ON THE COLLATERAL, INCLUDING BY WAY OF A CASH BID, CREDIT BID OR SET-OFF OF ITS SECURED DEBT OR A COMBINATION OF ANY OF THE ABOVE.**

**PLEASE NOTE THAT THE SALE IS SUBJECT TO THE RIGHTS AND SECURITY INTEREST OF MARBLE BRIDGE FUNDING GROUP, INC. ("MARBLE BRIDGE") AS DESCRIBED IN THAT INTERCREDITOR AGREEMENT DATED OCTOBER 4, 2017 BETWEEN MARBLE BRIDGE AND SECURED PARTY.**

Reference is made to the letter dated November 27, 2017 (“**Notice of Default**”), the letter dated February 14, 2018 (“**Notice of Acceleration**”), the Loan and Security Agreement, dated November 30, 2015 (as amended, “**Loan and Security Agreement**”), between Secured Party (as successor to Silicon Valley Bank) and Borrower and the related financing documents (with the Loan and Security Agreement, “**Secured Debt Documents**”). Pursuant to the Secured Debt Documents, Secured Party was granted a security interest in the Collateral.

As of the date of this Notice, the Borrower is obligated to Secured Party under the Secured Debt Documents for payment of principal, interest and other Obligations (as defined in the Loan and



Security Agreement), and any other amounts due and owing under the Secured Debt Documents, in the amount of no less than \$8.1 million, plus attorneys fees and costs of collection and enforcement.

At the Sale, Secured Party will accept bids on the Collateral upon the following terms and conditions:

1) All parties that intend to bid at the Sale must provide to Secured Party a cash deposit or a letter of credit in the amount of \$50,000 (“**Deposit**”), which must be received by Secured Party on or before 5:00 p.m. PDT on May 4, 2018. The form of the letter of credit for the Deposit must be acceptable to Secured Party and its counsel in their sole discretion. The Deposit of the non-successful bidders will be refunded and/or returned to such non-successful bidders within three (3) days following the completion of the bidding process. The Deposit of the successful bidder, if any, will be retained by Secured Party and applied against the successful bid, or in the event that the successful bidder fails to complete the Sale, shall be forfeited to Secured Party.

2) Secured Party reserves the right to postpone or renounce the time, date and/or place of the Sale. Secured Party reserves the right to sell the Collateral in lots, bulk, or as individual items. If competing offers with different terms and conditions are submitted, Secured Party reserves the right to determine which offer shall be accepted, and its decision in this matter shall be final.

3) Secured Party shall not be obligated to make or complete a Sale pursuant to this Notice, and reserves the right to reject any and all offers at its sole discretion for any reason whatsoever.

4) The sale of the Collateral shall be made without warranties or representations of any kind by Secured Party or Borrower, including, without limitation, any warranties or representations as to title, fitness for a particular purpose, or any other facts or matters and shall be made on an “as is where is” basis at the Sale.

5) The sale of the Collateral will be subject to any and all security interests of Marble Bridge, and such interests shall continue in the Collateral after the Sale.

6) Secured Party reserves the right to bid (by way of a cash bid, “credit bid” or set off) at the Sale or any continuation or adjournment thereof.

7) The Sale will not be complete until the successful bidder delivers to Secured Party, by and through Secured Party’s counsel, cash, cashier’s check, or immediately available funds, as necessary, in the full amount of the successful bid (net of the Deposit). Notwithstanding the foregoing, Secured Party may, but shall not be required to, allow the successful bidder up to three (3) business days to deliver the full payment as set forth above. In case the successful bidder fails to complete the purchase within the time allowed, the Collateral may thereupon again be offered for sale without further publication or notice or sold to the next highest bidder at the original sale. In the event of a failure to complete the purchase, the bidder will not be relieved of liability to complete the purchase, and the bidder’s Deposit will not be refunded and

such bidder shall be liable for any shortfalls or damages occurred by Secured Party in accepting another bid.

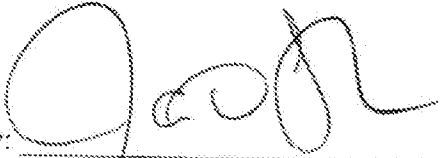
8) The above terms and conditions constitute the principal terms and conditions of the Sale and may be supplemented or amended by Secured Party at any time prior to the Sale.

9) The Borrower is entitled to an accounting of the unpaid indebtedness secured by the Collateral. The Borrower may request an accounting by contacting James O. Thoma of Stradling Yocca Carlson & Rauth, P.C., counsel for Secured Party, at 100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401; telephone number: (424) 214-7000; facsimile number: (424) 214-7010; e-mail: [jthoma@sy-cr.com](mailto:jthoma@sy-cr.com).

Individuals or companies interested in bidding at the Sale should contact Mr. Thoma to arrange for review of the due diligence materials, which are comprised of a copy of the Notice of Default, the Notice of Acceleration, the Secured Debt Documents and related documents and information pertaining to the Collateral ("**Diligence Materials**"). Any parties seeking to review the Diligence Materials will be required to execute a non-disclosure agreement prior to such review.

Dated: March 27, 2018

Stradling Yocca Carlson & Rauth, P.C.

By:   
James O. Thoma  
Attorneys for Secured Party,  
WhisperText Investment LLC

## EXHIBIT A

### COLLATERAL<sup>1</sup>

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>1</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Sale and Disposition of Collateral (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).

**EXHIBIT B**

**ADDRESSES**

WhisperText, Inc.  
69 Windward Avenue  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

WhisperText, Inc.  
1240 Morningside Way  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

Incorporating Services, Ltd.  
3500 S. Dupont Hwy  
Dover, DE 19901

Silicon Valley Bank  
15260 Ventura Blvd., Suite 1800  
Sherman Oaks, CA 91403  
Attn: Justin Mauch

Silicon Valley Bank  
1901 Main Street, Third Floor  
Santa Monica, CA 90405  
Attn: Frank O'Brien, Vice President

Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95054

SVB Financial Group  
3003 Tasman Drive, HC 215  
Santa Clara, CA 95054  
Attn: Treasury Department

Silicon Valley Bank  
80 East Rio Salado Parkway, Mail Sort AZ145  
Tempe, AZ 85281  
Attn: Global Deposit Operations

Marble Bridge Funding Group, Inc.  
P.O. Box 8195  
Walnut Creek, CA 94596

Marble Bridge Funding Group, Inc.  
1440 Maria Lane, Suite 210  
Walnut Creek, CA 94596  
Attn: Adam Fragen, Senior Vice President

Fenwick & West LLP  
1191 Second Avenue  
10th Floor  
Seattle, WA 98101  
Attn: Brian Kelly

Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041  
Attn: Ted Wang and Michael Esquivel

Duane Morris LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105  
Attn: Ron Oliner

Levy, Small & Lallas  
815 Moraga Drive  
Los Angeles, CA 90049

# Notice of Completion of Sale

## NOTICE OF COMPLETION OF SALE

**To:** WhisperText, Inc. (“Borrower”)

### ADDRESSES FOR BORROWER AND RELATED PARTIES ON EXHIBIT C

**From:** Whispertext Equity Investment, LLC (“Secured Party”), as assignee of Whispertext Investment LLC (“Investment”)

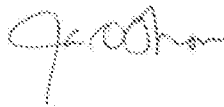
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This Notice of Completion of Sale is to notify the Borrower, and related parties in interest, that on May 11, 2018, at approximately 10:20 a.m. (PDT), the Secured Party concluded the public sale (“Sale”), for auction to the highest bidder, of the Collateral (as defined on Exhibit A annexed hereto, the “Collateral”), as set forth in the “Notice of Sale and Disposition of Collateral” (“Notice”) annexed hereto as Exhibit B. The Sale of the Collateral was conducted pursuant to the Uniform Commercial Code in relation to Secured Party’s security interest, pursuant to the Secured Debt.<sup>1</sup>

The Sale, held pursuant to numerous notices to the Borrower and other potentially interested parties, was successful and resulted in a final sale of the Collateral for a credit bid of \$8,200,000 by Secured Party (the “Successful Bidder”). Accordingly, title to the Collateral was transferred to the Successful Bidder pursuant to the Sale. An accounting will be provided to the Borrower in the near term.

Dated: May 18, 2018

Stradling Yocca Carlson & Rauth,  
a Professional Corporation



James O. Thoma  
Attorneys for Secured Party,  
Whispertext Equity Investment, LLC

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<sup>1</sup> The Sale was commenced pursuant to that certain (i) Loan and Security Agreement, dated November 30, 2015 (as amended, “Loan and Security Agreement”), between Secured Party (as successor to Silicon Valley Bank) and Borrower and the related financing documents (with the Loan and Security Agreement, “Secured Debt”), (ii) the Assignment Agreement, dated as of May 10, 2018, between Secured Party and Investment, (iii) the “Notice of Default” letter dated November 27, 2017, from Investment to the Company, and (iv) the “Notice of Acceleration” letter dated February 14, 2018, from Investment to the Company.

**EXHIBIT A**  
**COLLATERAL<sup>2</sup>**

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>2</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Completion of Sale (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).



**EXHIBIT B**

**NOTICE OF SALE AND DISPOSITION OF COLLATERAL**

## NOTICE OF SALE AND DISPOSITION OF COLLATERAL

**To:** WhisperText, Inc. (“**Borrower**”)

**ADDRESSES FOR BORROWER AND RELATED PARTIES ON EXHIBIT B**

**From:** Whisertext Investment LLC (“**Secured Party**”)

**Sale Date:** May 11, 2018

**Time:** 10:00 a.m. (PDT)

**Place:** Stradling Yocca Carlson & Rauth, P.C.  
100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401

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This Notice of Sale and Disposition of Collateral (“**Notice**”) is given pursuant to the California Uniform Commercial Code, and any other applicable law (collectively, the “**UCC**”). On the date, time and place set forth above, Secured Party or its designee/assignee will offer at public auction sale (the “**Sale**”) the Collateral (as defined below). Such Collateral consists of all rights title and interest of Borrower, and properties and assets, owned or purported to be owned by the Borrower, of every kind, real, personal and mixed, tangible or intangible, and all as more particularly described on Exhibit A (the “**Collateral**”).

**PLEASE NOTE THAT THE SECURED PARTY RESERVES THE RIGHT TO BID ON THE COLLATERAL, INCLUDING BY WAY OF A CASH BID, CREDIT BID OR SET-OFF OF ITS SECURED DEBT OR A COMBINATION OF ANY OF THE ABOVE.**

**PLEASE NOTE THAT THE SALE IS SUBJECT TO THE RIGHTS AND SECURITY INTEREST OF MARBLE BRIDGE FUNDING GROUP, INC. ("MARBLE BRIDGE") AS DESCRIBED IN THAT INTERCREDITOR AGREEMENT DATED OCTOBER 4, 2017 BETWEEN MARBLE BRIDGE AND SECURED PARTY.**

Reference is made to the letter dated November 27, 2017 (“**Notice of Default**”), the letter dated February 14, 2018 (“**Notice of Acceleration**”), the Loan and Security Agreement, dated November 30, 2015 (as amended, “**Loan and Security Agreement**”), between Secured Party (as successor to Silicon Valley Bank) and Borrower and the related financing documents (with the Loan and Security Agreement, “**Secured Debt Documents**”). Pursuant to the Secured Debt Documents, Secured Party was granted a security interest in the Collateral.

As of the date of this Notice, the Borrower is obligated to Secured Party under the Secured Debt Documents for payment of principal, interest and other Obligations (as defined in the Loan and

Security Agreement), and any other amounts due and owing under the Secured Debt Documents, in the amount of no less than \$8.1 million, plus attorneys fees and costs of collection and enforcement.

At the Sale, Secured Party will accept bids on the Collateral upon the following terms and conditions:

1) All parties that intend to bid at the Sale must provide to Secured Party a cash deposit or a letter of credit in the amount of \$50,000 (“**Deposit**”), which must be received by Secured Party on or before 5:00 p.m. PDT on May 4, 2018. The form of the letter of credit for the Deposit must be acceptable to Secured Party and its counsel in their sole discretion. The Deposit of the non-successful bidders will be refunded and/or returned to such non-successful bidders within three (3) days following the completion of the bidding process. The Deposit of the successful bidder, if any, will be retained by Secured Party and applied against the successful bid, or in the event that the successful bidder fails to complete the Sale, shall be forfeited to Secured Party.

2) Secured Party reserves the right to postpone or renounce the time, date and/or place of the Sale. Secured Party reserves the right to sell the Collateral in lots, bulk, or as individual items. If competing offers with different terms and conditions are submitted, Secured Party reserves the right to determine which offer shall be accepted, and its decision in this matter shall be final.

3) Secured Party shall not be obligated to make or complete a Sale pursuant to this Notice, and reserves the right to reject any and all offers at its sole discretion for any reason whatsoever.

4) The sale of the Collateral shall be made without warranties or representations of any kind by Secured Party or Borrower, including, without limitation, any warranties or representations as to title, fitness for a particular purpose, or any other facts or matters and shall be made on an “as is where is” basis at the Sale.

5) The sale of the Collateral will be subject to any and all security interests of Marble Bridge, and such interests shall continue in the Collateral after the Sale.

6) Secured Party reserves the right to bid (by way of a cash bid, “credit bid” or set off) at the Sale or any continuation or adjournment thereof.

7) The Sale will not be complete until the successful bidder delivers to Secured Party, by and through Secured Party’s counsel, cash, cashier’s check, or immediately available funds, as necessary, in the full amount of the successful bid (net of the Deposit). Notwithstanding the foregoing, Secured Party may, but shall not be required to, allow the successful bidder up to three (3) business days to deliver the full payment as set forth above. In case the successful bidder fails to complete the purchase within the time allowed, the Collateral may thereupon again be offered for sale without further publication or notice or sold to the next highest bidder at the original sale. In the event of a failure to complete the purchase, the bidder will not be relieved of liability to complete the purchase, and the bidder’s Deposit will not be refunded and

such bidder shall be liable for any shortfalls or damages occurred by Secured Party in accepting another bid.

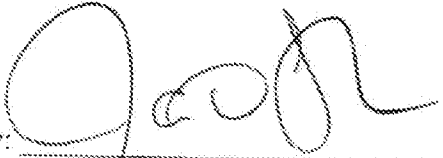
8) The above terms and conditions constitute the principal terms and conditions of the Sale and may be supplemented or amended by Secured Party at any time prior to the Sale.

9) The Borrower is entitled to an accounting of the unpaid indebtedness secured by the Collateral. The Borrower may request an accounting by contacting James O. Thoma of Stradling Yocca Carlson & Rauth, P.C., counsel for Secured Party, at 100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401; telephone number: (424) 214-7000; facsimile number: (424) 214-7010; e-mail: [jthoma@sy-cr.com](mailto:jthoma@sy-cr.com).

Individuals or companies interested in bidding at the Sale should contact Mr. Thoma to arrange for review of the due diligence materials, which are comprised of a copy of the Notice of Default, the Notice of Acceleration, the Secured Debt Documents and related documents and information pertaining to the Collateral ("**Diligence Materials**"). Any parties seeking to review the Diligence Materials will be required to execute a non-disclosure agreement prior to such review.

Dated: March 27, 2018

Stradling Yocca Carlson & Rauth, P.C.

By:   
James O. Thoma  
Attorneys for Secured Party,  
WhisperText Investment LLC

## EXHIBIT A

### COLLATERAL<sup>1</sup>

The Collateral, which is more particularly described in the Secured Debt Documents, consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral also specifically includes all intellectual property of the Borrower, including but not limited to registered or unregistered trademarks, copyrights, copyright applications, patents, patent applications, mask works, trade secrets, servicemarks, tradenames, rights in computer software, computer software products and source code, design rights, websites, domain names and all URL registrations in connection therewith, licenses and rights of use in connection with the foregoing, and any claims for damages for infringement of any of the foregoing.

Notwithstanding the foregoing, the Collateral does not include, (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) any interest of Borrower as a lessee or sublessee under a real property lease; or (c) rights held under an inbound license of Intellectual Property in which Borrower is the licensee to the extent that such rights are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law).

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<sup>1</sup> Capitalized terms not otherwise defined herein or in the attached Notice of Sale and Disposition of Collateral (the "Notice") shall have the meaning ascribed to such terms in the Loan and Security Agreement (as defined in the Notice).

**EXHIBIT B**

**ADDRESSES**

WhisperText, Inc.  
69 Windward Avenue  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

WhisperText, Inc.  
1240 Morningside Way  
Venice, CA 90291  
Attn: Chief Executive Officer/Michael Heyward

Incorporating Services, Ltd.  
3500 S. Dupont Hwy  
Dover, DE 19901

Silicon Valley Bank  
15260 Ventura Blvd., Suite 1800  
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Attn: Frank O'Brien, Vice President

Silicon Valley Bank  
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SVB Financial Group  
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Silicon Valley Bank  
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Attn: Ron Oliner

Levy, Small & Lallas  
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Los Angeles, CA 90049

## **EXHIBIT C**

### **ADDRESSES**

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Attn: Chief Executive Officer/Michael Heyward

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Attn: John Mittelbach, Esq.

# Exhibit I

**Exhibit I**

**ACKNOWLEDGEMENT OF ASSIGNMENT OF PATENTS AND TRADEMARKS  
THROUGH STATE PUBLIC FORECLOSURE SALE**

I, Michael Heyward, CEO of WhisperText, Inc., a Delaware corporation (“Company”), am an authorized representative of Company and am authorized to make the statements made herein. On May 11, 2018, Whispertext Equity Investment, LLC, a Delaware limited liability company (“Secured Party”), conducted a foreclosure sale of substantially all of the assets of the Company (“Foreclosure Sale”). The collateral foreclosed upon included the Foreclosed Patents and Foreclosed Trademarks listed on, respectively, Schedule 1 and Schedule 2 of the Assignment of Patents and Trademarks Through State Public Foreclosure Sale. Prior to the Foreclosure Sale, Secured Party held a perfected security interest in substantially all of the assets of the Company, as an assignee of those interests of Whispertext Investment LLC, a Delaware limited liability company, which was an assignee of Silicon Valley Bank, a California corporation and lender to the Company. I hereby authorize the Patent and Trademark Office to reflect in its official records the transfer and assignment of the Foreclosed Patents and Foreclosed Trademarks from the Company to Secured Party as of the date hereof and with effect as of the date of the May 11, 2018 Foreclosure Sale.

Dated: June 5, 2018

WhisperText, Inc.



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

Name: Michael Heyward

Title: CEO