

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM567826

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
UPLAND SOFTWARE, INC		01/07/2016	Corporation: TEXAS
RECEIVING PARTY DATA			
Name:	LeadLander, Corporation		
Street Address:	104 Estelle Avenue		
City:	Kentfield		
State/Country:	CALIFORNIA		
Postal Code:	94904		
Entity Type:	Corporation: CALIFORNIA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	77527799	LEADLANDER	
CORRESPONDENCE DATA			
Fax Number:	4156342495		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	415-305-9330		
Email:	bhabermann@leadlander.com		
Correspondent Name:	Brett Habermann		
Address Line 1:	104 Estelle Avenue		
Address Line 4:	Kentfield, CALIFORNIA 94904		
NAME OF SUBMITTER:	Brett Habermann		
SIGNATURE:	/Brett C. Habermann/		
DATE SIGNED:	03/18/2020		
Total Attachments: 85			
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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “*Agreement*”), dated as of October 5, 2019 (the “*Effective Date*”), is entered into between Upland Software, Inc., a Delaware corporation (“*Seller*”) and LL Acquisition Company, a Delaware corporation (“*Buyer*”).

RECITALS

WHEREAS, Seller presently owns and uses the Purchased Assets (as defined below) to provide analytics and tracking services for websites (the “*Services*”) and Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the assets relating to the Services, subject to the terms and conditions set forth herein.

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

ARTICLE I DEFINITIONS

The following terms have the meanings specified in this ARTICLE I:

“*Affiliate*” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Business Day*” means any day except Saturday, Sunday or any other day on which commercial banks located in Austin, Texas are authorized or required by Law to be closed for business.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Customer*” means any counterparty to a Material Contract.

“*Disclosure Schedules*” means the Disclosure Schedules delivered by Seller and Buyer at or prior to the Closing.

“*Encumbrance*” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“*Fundamental Representations*” means, with respect to Seller, Section 4.06 (Intellectual Property) and Section 4.08 (Compliance with Laws; Data Privacy).

“**GDPR**” means Regulation (EU) 2016/679 (General Data Protection Regulation) of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as currently in effect and as may be amended from time to time.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Information Privacy and Security Laws**” means any applicable Law or directive issued by a Governmental Authority, all binding guidance issued by any Governmental Authority thereunder and any applicable self-regulatory guidelines that the Seller is obligated to comply with under any Law, in each case governing: (a) the privacy, protection, or security of Protected Information, including as relevant to the collection, storage, processing, transfer, sharing and destruction of Protected Information or (b) online behavioral advertising, tracking technologies, “cookies” and website visit analytics and statistics. Without limiting the foregoing, “Information Privacy and Security Laws” includes the following, in each case as applicable: the Federal Trade Commission Act, the Children’s Online Privacy Protection Act, the Computer Fraud and Abuse Act, the Electronic Communications Privacy Act, state data security laws, state social security number protection laws, state data breach notification laws, state consumer protection laws, the GDPR (and any European Union member states’ laws and regulations implementing it), the Canadian Personal Information Protection and Electronic Documents Act, India’s Information Technology Act, Japan’s Act on the Protection of Personal Information, Hong Kong’s Personal Data (Privacy) Ordinance, and Australia’s Privacy Amendment (Private Sector) Act 2000, as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012, and other applicable data protection laws of the jurisdictions in which the Seller operates the Services.

“**Intellectual Property**” means any and all of the following arising pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, and similar indicia of source of origin, all registrations and applications for registration thereof, and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights and all registrations and applications for registration thereof; (c) trade secrets and know-how; (d) patents and patent applications; (e) internet domain name registrations; and, (f) other intellectual property and related proprietary rights.

“**Intellectual Property Agreements**” means all licenses, sublicenses and other agreements by or through which other Persons grant Seller or Seller grants any other Persons any exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used exclusively to perform the Services.

“**Intellectual Property Assets**” means all Intellectual Property that is necessary to perform the Services and operate the Purchased Assets, including the Intellectual Property Registrations set forth on Section 4.06(a) of the Disclosure Schedules and Services Data.

“**Intellectual Property Registrations**” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“**Key Employee**” means each of Brett Habermann, Todd Masson and Garrett Leahy.

“**Knowledge of Seller or Seller’s Knowledge**” or any other similar knowledge qualification, means the actual knowledge of Jed Alpert, after commercially reasonable investigation.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, including Information Privacy and Security Laws.

“**Legal Proceeding**” means any action, inquiry, proceeding, suit, hearing, litigation, audit or investigation, in each case whether civil, criminal, administrative, judicial or investigative, or any appeal therefrom, by or before a Governmental Authority.

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

“**Losses**” means actual out-of-pocket losses, damages, liabilities, costs or expenses, including reasonable attorneys’ fees.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is materially adverse to (a) the business, results of operations, financial condition or Purchased Assets, taken as a whole, (b) the ability of Seller to consummate the transactions contemplated hereby, or (c) the lawfulness of the Services, as conducted on the Closing Date; *provided, however*, that “**Material Adverse Effect**” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Services are marketed; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any matter of which Buyer is aware on the date hereof; (vii) any changes in applicable Laws or accounting

rules (including GAAP) or the enforcement, implementation or interpretation thereof; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Seller; (vii) any natural or man-made disaster or acts of God; or (viii) any failure by the results of Services to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded).

“Material Contract” means any agreement through or under which (x) Seller offers or performs the Services, (y) Seller engages with Customers to exploit the Purchased Assets, (z) Services Data is collected, shared, hosted or used to perform the Services.

“Permits” means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Personal Data” means a natural Person’s (including a customer’s or an employee’s) name, street address, telephone number, e-mail address, photograph, social security number, driver’s license number, passport number or customer or account number, or any other piece of information that allows the identification of a natural Person or is otherwise considered personally identifiable information or personal data under Law, arising from or collected through the Purchased Assets or the Services.

“Protected Information” means (a) Personal Data and (b) any information that is governed, regulated or protected by one or more Information Privacy and Security Laws.

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Services Data” means data collected, generated, or received in connection with the marketing, delivery, or use of Services and Personal Data.

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“*Transaction Documents*” means this Agreement, the Promissory Note, the Transition Services Agreement, Bill of Sale, the Non-Compete and the Assignment and Assumption Agreement.

ARTICLE II PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, all of Seller’s right, title and interest in the assets set forth on Schedule 2.01 attached hereto, which may be supplemented, amended or updated prior to Closing, as mutually agreed upon by Buyer and Seller, and all Intellectual Property Assets (collectively, the “*Purchased Assets*”). In connection with the purchase of the Purchase Assets, Buyer shall assume the liabilities and obligations (i) arising on or after the Closing, under or relating to the contracts included as Purchased Assets, and (ii) relating to Buyer’s ownership of the Purchased Assets or providing the Services on or after the Closing.

Section 2.02 Excluded Assets. Other than the Purchased Assets, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the “*Excluded Assets*”).

Section 2.03 Purchase Price. The aggregate purchase price (the “*Purchase Price*”) for the Purchased Assets shall be \$600,000, paid as follows: (a) \$100,000, payable in cash (the “*Down Payment*”), which shall be paid by wire transfer of immediately available funds (to an account designated in writing by Seller to Buyer) on the later of the Closing Date or November 15, 2019; and (b) \$500,000, payable pursuant to the promissory note in substantially the form of Exhibit A (the “*Promissory Note*”), which shall be due and payable in the following amounts and on the following dates: (x) \$100,000, due on the first anniversary of the Closing; (y) \$200,000, due on the second anniversary of the Closing; and (z) \$200,000, due on the third anniversary of the Closing.

Section 2.04 Allocation of Purchase Price. Seller and Buyer agree to cooperate in good faith to prepare a schedule allocating the Purchase Price (including any Assumed Liabilities treated as consideration for the Purchased Assets for Tax purposes) (the “*Allocation Schedule*”), which once agreed upon, shall be attached hereto as Schedule 2.04. The Allocation Schedule shall be prepared in accordance with Section 1060 of the Code. The Allocation Schedule shall be deemed final unless Buyer notifies Seller in writing that Buyer objects to one or more items reflected in the Allocation Schedule within 15 days after the Closing Date. In the event of any such objection, Seller and Buyer shall negotiate in good faith to resolve such dispute; *provided, however*, that if Seller and Buyer are unable to resolve any dispute with respect to the Allocation Schedule within 30 days after the Closing Date, such dispute shall be resolved by an impartial nationally recognized firm of independent certified public accountants mutually appointed by Buyer and Seller. The fees and expenses of such accounting firm shall be borne equally by Seller and Buyer. Seller and Buyer agree to file their respective IRS Forms 8594 and all federal, state and local Tax Returns in accordance with the Allocation Schedule.

Section 2.05 Non-assignable Assets.

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.05, to the extent that the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery, thereof; *provided, however*, that, subject to the satisfaction or waiver of the conditions contained in ARTICLE VII, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account thereof. Following the Closing, Seller and Buyer shall use commercially reasonable efforts, and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution or amendment required to novate all liabilities and obligations under any and all contracts included in Purchased Assets or to obtain in writing the unconditional release of all parties to such arrangements, so that, in any case, Buyer shall be solely responsible for such liabilities and obligations from and after the Closing Date; *provided, however*, that neither Seller nor Buyer shall be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, Seller shall sell, assign, transfer, convey and deliver to Buyer the relevant Purchased Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Applicable sales, transfer and other similar Taxes in connection with such sale, assignment, transfer, conveyance or license shall be paid in accordance with Section 6.05.

(b) To the extent that any Purchased Asset and/or Assumed Liability cannot be transferred to Buyer following the Closing pursuant to this Section 2.05, Buyer and Seller shall use commercially reasonable efforts to enter into such arrangements (such as subleasing, sublicensing or subcontracting) to provide to the parties the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Purchased Asset and/or Assumed Liability to Buyer as of the Closing and the performance by Buyer of its obligations with respect thereto. Buyer shall, as agent or subcontractor for Seller pay, perform and discharge fully the liabilities and obligations of Seller thereunder from and after the Closing Date. To the extent permitted under applicable Law, Seller shall, at Buyer's expense, hold in trust for and pay to Buyer promptly upon receipt thereof, such Purchased Asset and all income, proceeds and other monies received by Seller to the extent related to such Purchased Asset in connection with the arrangements under this Section 2.05. Seller shall be permitted to set off against such amounts all direct costs associated with the retention and maintenance of such Purchased Assets. Notwithstanding anything herein to the contrary, the provisions of this Section 2.05 shall not apply to any consent or approval required under any antitrust, competition or trade regulation Law.

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "*Closing*") shall take place

via the electronic exchange of signatures, delivered courtesy of Pillsbury Winthrop Shaw Pittman LLP, 401 Congress Avenue, Suite 1700, Austin, TX 78701, within five (5) Business Days after all of the conditions to Closing set forth in ARTICLE VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “*Closing Date*” or “*Closing*”

Section 3.02 Closing Deliverables.

- (a) At the Closing, Seller shall deliver to Buyer the following:
 - (i) the Transition Services Agreement, duly executed by Seller;
 - (ii) a bill of sale in the form of Exhibit B hereto (the “*Bill of Sale*”) and duly executed by Seller, transferring the tangible personal property included in the Purchased Assets to Buyer;
 - (iii) an assignment agreement in the form of Exhibit C hereto (the “*Assignment and Assumption Agreement*”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets, and the obligations relating thereto;
 - (iv) a non-compete agreement in substantially the form attached as Exhibit D hereto (the “*Non-Compete*”), duly executed by Seller; and
 - (v) the Disclosure Schedules, relating to Seller (if not delivered prior to Closing).
- (b) At the Closing, Buyer shall deliver to Seller the following:
 - (i) the Down Payment, if required pursuant to Section 2.03(a);
 - (ii) the Promissory Note, duly executed by Buyer;
 - (iii) the Assignment and Assumption Agreement, duly executed by Buyer;
 - (iv) the Transition Services Agreement, duly executed by Buyer; and
 - (v) the Disclosure Schedules, relating to Buyer (if not delivered prior to Closing).

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to provide the Services as currently conducted. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or offer and performance of the Services as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a Material Adverse Effect.

Section 4.02 Authority of Seller. Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Seller; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, or the Purchased Assets; or (c) except as set forth in Section 4.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Material Contract; except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect. To Seller's Knowledge as of the Closing, no greater than 6% of Customers have communicated an intention to not renew its Material Contract. The sole material

Liability appurtenant to the Purchased Assets is the obligation of the owner of the Purchased Assets to perform and discharge all of the obligations under the Material Contracts.

Section 4.04 Title to Purchased Assets. Seller has good and valid title to all tangible personal property and intangible property included in the Purchased Assets, free and clear of Encumbrances. Seller has not transferred ownership of, or granted any exclusive rights in, any Purchased Asset to any third party. No third party has any ownership right, title, interest, claim in or lien on any of the Purchased Assets.

Section 4.05 Sufficiency of Purchased Assets. The Purchased Assets are sufficient for the continued conduct of the Services after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to offer the Services as currently performed.

Section 4.06 Intellectual Property.

(a) Section 4.06(a) of the Disclosure Schedules lists (i) all Intellectual Property Registrations and (ii) all Intellectual Property Agreements that are material to the conduct of the Services (excluding shrink-wrap, click-wrap, or other similar agreements for commercially available off-the-shelf software with annual license or subscription fees or a replacement value of less than \$5,000). Seller has the right to use the Intellectual Property licensed to Seller under the Intellectual Property Agreements.

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

(c) To the Knowledge of Seller, at no time during the conception of or reduction to practice of any of the Purchased Assets, was the Seller or any developer, inventor or other contributor to such Purchased Assets operating under any grants from any Governmental Authority or agency or private source, performing research sponsored by any Governmental Authority or agency or private source or subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third party that could adversely affect the Buyer's rights in such Purchased Assets. The Seller has secured from all named inventors of patents, consultants, advisors, employees and independent contractors who independently or jointly contributed to or participated in the conception, reduction to practice, creation or development of any Purchased Assets (any such Person, an "*Author*"), unencumbered and unrestricted exclusive ownership of, all of the Authors' right, title and interest in an to such Purchased Assets, and the Seller has obtained the waiver of all non-assignable rights. No Author

has retained any rights, licenses, claims or interest whatsoever with respect to any Purchased Assets developed by the Author for the Seller. Without limiting the foregoing, the Company has obtained written and enforceable proprietary information and invention disclosure and Intellectual Property assignments from all current and former Authors and, in the case of patents and patent applications, such assignments have been recorded with the relevant authorities in the applicable jurisdiction or jurisdictions.

(d) Except as set forth in Section 4.06 of the Disclosure Schedules, to Seller's Knowledge: (i) the offering of the Services as currently conducted does not infringe, misappropriate, dilute or otherwise violate the Intellectual Property of any Person; and (ii) no Person is infringing, misappropriating or otherwise violating any Purchased Assets. Seller has received no notice or statement asserting that any Purchased Asset infringes, misappropriates or otherwise violates the Intellectual Property of any Person. Notwithstanding anything to the contrary in this Agreement, this Section 4.06 constitutes the sole representation and warranty of the Seller under this Agreement with respect to any actual or alleged infringement, misappropriation or other violation by Seller of any Intellectual Property of any other Person.

Section 4.07 Legal Proceedings; Governmental Orders; Tax Returns

(a) Except as set forth in Section 4.07(a) of the Disclosure Schedules, there are no actions, suits, claims, investigations or other Legal Proceedings pending or, to Seller's Knowledge, threatened against or by Seller relating to or affecting the Services or the Purchased Assets.

(b) Except as set forth in Section 4.07(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Purchased Assets.

(c) With respect to revenues and income attributable to the Purchased Assets or the Services, Seller has have timely filed (taking into account any valid extension of time within which to file) all Tax Returns that are required to be filed by or with respect to it; all such Tax Returns are true, correct and complete; and, Seller has timely paid in full to the appropriate Governmental Authority all amounts required to be paid under any Tax Return or Law.

(d) As of the Closing, Seller will have paid to each Key Employee all compensation owed to him by Seller (less applicable withholdings), except for commission payments, which shall be paid in accordance with the Seller's standard commission policy.

Section 4.08 Compliance With Laws; Data Privacy.

(a) Except as set forth in Section 4.08(a) of the Disclosure Schedules, Seller is in compliance with all Laws applicable to the Services and the Purchased Assets. No Permits are required for Seller to perform the Services.

(b) To the Seller's Knowledge, and solely with respect to the Purchased Assets and Services:

(i) (a) Seller is in compliance with all Information Privacy and Security Laws; (b) all Personal Data and Services Data has been obtained, used, shared, and transmitted in compliance with Information Privacy and Security Laws; (c) no current, or to the Knowledge of the Seller, proposed, Information Privacy and Security Law prohibits the Services, or materially impairs use of the Purchased Assets according to the same standards and protocols as currently performed by Seller;

(ii) there has been no (a) data security breach of, unauthorized access to, or malicious disruption of any Protected Information, networks or information technology that transmits or maintains Protected Information or other confidential information, or (b) other incidents involving the unauthorized access, acquisition, use or disclosure of any Protected Information owned, used, hosted, maintained or controlled by or on behalf of the Seller, including any such unauthorized access, acquisition, use or disclosure of Protected Information that would constitute a breach for which notification by the Seller to individuals and/or Governmental Authorities is required under any applicable Information Privacy and Security Laws;

(iii) none of the Seller's vendors, suppliers and subcontractors, have (a) suffered any security breach that resulted in any unauthorized access to or use of any Protected Information, (b) breached any obligations relating to Protected Information or (iii) violated any Information Privacy and Security Laws;

(iv) Seller maintains and implements a reasonable written information security program covering the Seller designed to (a) identify and address internal and external risks to the security of any confidential information in their possession, including Protected Information, (b) implement, monitor and improve reasonable administrative, technical and physical safeguards to control these risks and (c) maintain notification procedures in compliance in all material respects with applicable Information Privacy and Security Laws that require notification to any Person in the case of any breach of security compromising data containing Protected Information; and,

(v) no Person has, to the Seller's Knowledge, (a) made any written claim against the Seller or (b) commenced any Proceeding by or before any Governmental Authority against the Seller, with respect to (I) any alleged violation of Information Privacy and Security Laws by the Seller, or any third party in such third party's collection, maintenance, storage, use, processing, disclosure, transfer or disposal of Protected Information for the Seller or (II) any of the Seller's privacy or data security practices with respect to Protected Information, including any loss, damage or unauthorized access, acquisition, use, disclosure, modification or other misuse of any Protected Information maintained by or on behalf of the Seller.

Section 4.09 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

Section 4.10 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE IV (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any

representation or warranty as to the accuracy or completeness of any information regarding the Services and the Purchased Assets furnished or made available to Buyer and its Representatives, or as to the future revenue, profitability or success of the Services, or any representation or warranty arising from statute or otherwise in law.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.01 Organization and Authority of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware.

Section 5.02 Authority of Buyer. Buyer has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings and such consents, approvals, Permits, Governmental Orders, declarations, filings

or notices which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and thereby.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 5.05 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 5.06 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall be able to pay its debts as they become due and have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 5.07 Legal Proceedings. Except as set forth in Section 5.07 of the Disclosure Schedules, there are no actions, suits, claims, investigations or other Legal Proceedings pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 5.08 Limited Representations. Neither Seller nor any other Person has made any representation or warranty as to Seller, the Services, the Purchased Assets or this Agreement, except as expressly set forth in ARTICLE IV of this Agreement (including the related portions of the Disclosure Schedules).

ARTICLE VI COVENANTS

Section 6.01 Transition Services Agreement. Seller and Buyer shall negotiate in good faith a transition services agreement to be entered into by Buyer and Seller at the Closing (the "*Transition Services Agreement*"), provided that the aggregate fee payable to Seller will equal \$360,000, paid as follows: (a) \$200,000, payable in cash, on the later of the Closing Date or November 15, 2019, and (b) \$160,000 payable in equal monthly installments over a term mutually agreed upon in the Transition Services Agreement. The Transition Services Agreement will provide for Buyer to occupy and use Seller's offices in Marin County, California, until March 8, 2020 without any additional fee or cost. The Transition Services Agreement will provide that Seller promptly make available to Buyer certain contractors who provide services with respect to SaaS subscriptions and other systems ancillary to the Purchased Assets. Once the form of the Transition Services Agreement is agreed upon, it shall be attached hereto as Exhibit E.

Section 6.02 Supplement to Disclosure Schedules. Prior to the Closing, each of Seller and Buyer shall have the right (but not the obligation) to supplement or amend the Disclosure

Schedules (each a “*Schedule Supplement*”). Any disclosure in any such Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the indemnification or termination rights contained in this Agreement or of determining whether or not the conditions set forth in Section 7.02(a) have been satisfied.

Section 6.03 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel):

(a) Prior to Closing, Buyer shall not make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of Seller, and the parties shall cooperate as to the timing and contents of any such announcement.

(b) After Closing, Buyer and Seller shall cooperate as to the timing and contents of communications alerting counterparties to Material Contracts of this Agreement and the transactions contemplated hereby.

Section 6.04 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 6.05 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne 50% by Buyer and 50% by Seller, paid by Buyer when due, with Seller’s portion reimbursed from Seller to Buyer within thirty (30) days of Buyer’s written notice to Seller of payment thereof. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

Section 6.06 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

Section 6.07 Non-Competition. At or prior to the Closing, Seller shall enter into the Non-Compete, pursuant to which Seller agrees to refrain from entering into any line of business that is competitive with the Services, for a period of 10 years following the Closing, reaching customers and clients with principal executive officers in the United States, Canada, the European Union, Japan and China.

Section 6.08 Key Employees. Buyer shall offer employment effective on the Closing Date, to all Key Employees. Buyer and Seller intend that the transactions contemplated by this Agreement should not constitute a separation or termination of employment of any Key Employee who accepts an employment offer by Buyer, and that each such Key Employee will have continuous employment immediately before and immediately after the Closing. Seller shall not

enforce any non-compete, covenant against competition or other post-separation restriction that any Key Employee is subject to, which could impact his provision of services for the Buyer and Seller has no intention to initiate any Legal Proceeding against any Key Employee after the Closing. Seller shall pay COBRA premiums for Brett Habermann and Garrett Leahy to allow them to maintain their health and wellness insurance benefits until December 31, 2019.

Section 6.09 No Bad Faith Anti-Sandbagging. Prior to the Closing, Seller shall not in bad faith send large amounts of data, or written or electronic communications, outside of the ordinary course of business to Buyer that would have the purpose of avoiding or reducing any of Seller's Losses pursuant to Section 8.04(g).

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) Each of the Key Employees is permitted to begin providing full-time services to Buyer without the necessity of any visa sponsor or immigration condition and without any restrictions from any prior employer or Seller (except for customary non-disclosure obligations); and, each Key Employee has accepted an offer to begin full-time employment with Buyer.

(c) Buyer and Seller shall have agreed upon the form of Transition Services Agreement and the Disclosure Schedules.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in ARTICLE IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(a).

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in ARTICLE V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Down Payment, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(b).

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Except for Fundamental Representations and subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is 18 months from the Closing Date. Fundamental Representations will survive the Closing and shall remain in full force and effect until the date that is 30 days following the expiration of the applicable statute of limitations. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Seller. Subject to the other terms and conditions of this ARTICLE VIII, Seller shall indemnify Buyer against, and shall hold Buyer harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Buyer based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement.

Section 8.03 Indemnification By Buyer. Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify Seller against, and shall hold Seller harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement.

Section 8.04 Certain Limitations. The party making a claim under this ARTICLE VIII is referred to as the “*Indemnified Party*”, and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the “*Indemnifying Party*”. The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 8.02(a) or Section 8.03(a), as the case may be, until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) or Section 8.03(a) exceeds \$9,000 (the “*Basket*”), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Basket. With respect to any claim as to which the Indemnified Party may be entitled to indemnification under Section 8.02(a) or Section 8.03(a), as the case may be, the Indemnifying Party shall not be liable for any individual or series of related Losses which do not exceed \$3,000.

(b) Except for fraud, the aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 8.02(a) or Section 8.03(a), as the case may be, shall not exceed the Purchase Price.

(c) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(d) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be reduced by an amount equal to any Tax benefit realized or reasonably expected to be realized as a result of such Loss by the Indemnified Party.

(e) In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

(f) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(g) Seller shall not be liable under this ARTICLE VIII for any Losses based upon or arising out of any inaccuracy in or breach of (i) any of the representations or warranties of Seller (other than Fundamental Representations and representations in Section 4.07 (Legal Proceedings; Governmental Orders; Tax Returns)) contained in this Agreement if Buyer had knowledge of such inaccuracy or breach prior to the Closing, or (ii) any Fundamental Representations and any representations in Section 4.07 (Legal Proceedings; Governmental Orders; Tax Returns) if Buyer had specific written notice of an inaccuracy or breach prior to the Closing. Notwithstanding anything to the contrary in this Agreement, this Section 8.04(g) will not apply to the unintentional release of Seller data on or around August 2018.

Section 8.05 Indemnification Procedures.

(a) Third-Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “*Third-Party Claim*”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third-Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to Section 8.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available (subject to the remaining provisions of ARTICLE VIII) records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees

of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) **Settlement of Third-Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 8.05(b). If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third-Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any claim by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a “*Direct Claim*”) shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 8.06 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.07 Exclusive Remedies. Subject to Section 10.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from intentional fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE VIII. Nothing in this Section 8.07 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 10.11 or to seek any remedy on account of any intentional fraud by any party hereto.

ARTICLE IX TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Seller by December 31, 2019 (the "***Drop Dead Date***"); or

(ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

- (c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this ARTICLE IX and ARTICLE X hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

ARTICLE X MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein (including Section 6.05 hereof), all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Seller:

Upland Software, Inc.
Frost Bank Tower
401 Congress Avenue, Suite 1850
Austin, TX 78701-3788 USA

Attention: Kin Gill
kgill@uplandsoftware.com

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

Pillsbury Winthrop Shaw Pittman LLP
401 Congress Avenue, Suite 1700
Austin, TX 78701-3797

Attention: Steve Tyndall
Anthony Krueger
Steven.tyndall@pillsbury.com
Anthony.krueger@pillsbury.com

If to Buyer:

LL Acquisition Company

Attention: Brett Habermann
Michael Hexner
bhabermann@yahoo.com
michaelhexner@gmail.com

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

California Business Counsel, P.C.

Attention: Jay Purcell
Matt Walding
jay@calbusinesscounsel.com
matt@santoswalding.com

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.10 Governing Law; Arbitration. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial or other Arbitration Rules in Austin, Texas, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

UPLAND SOFTWARE, INC.

DocuSigned by:
Kin Gill
By: _____
Name: Kin Gill
Title: SVP, General Counsel and Secretary

LL ACQUISITION COMPANY

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

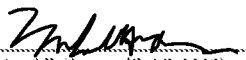
UPLAND SOFTWARE, INC.

By: _____

Name:

Title:

LL ACQUISITION COMPANY


By: Michael T. Hexner (Oct 3, 2013)

Name: Michael Hexner

Title: Chief Operating Officer

Index of Exhibits and Schedules

Exhibit A	Promissory Note
Exhibit B	Bill of Sale
Exhibit C	Assignment Agreement
Exhibit D	Non-Compete
Exhibit E	Transition Services Agreement

Schedule 2.01	Purchased Assets
Schedule 2.04	Allocation Schedule

Disclosure Schedules

SECURED PROMISSORY NOTE

\$500,000

November 15, 2019

FOR VALUE RECEIVED, LeadLander Corporation, a Delaware corporation (the “*Payor*”) hereby promises to pay to the order of Upland Software (the “*Payee*”) in accordance with the terms of this Secured Promissory Note (this “*Note*”) and to the extent not earlier prepaid, the aggregate principal sum of \$500,000 (the “*Principal Amount*”). All payments due the Payee hereunder shall be made to the Payee at the place, in the type of money and funds and in the manner specified below.

1. **Definitions and Interpretations.** The following terms shall have the meanings set forth below:

“*Applicable Law*” means (a) all applicable common law and principles of equity and (b) all applicable provisions of all constitutions, statutes, treaties, rules, regulations, orders, decisions, judgments and decrees of governmental authorities.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“*Business Day*” means any day other than a Saturday, Sunday or other day on which commercial banks in Austin, Texas are authorized to close.

“*Debtor Relief Laws*” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“*Dollars*” and the sign “\$” mean lawful money of the United States of America.

“*Highest Lawful Rate*” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to the Payee which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

“*Indebtedness*” of any Person means (in each case, whether with full or limited recourse), without duplication, (a) any obligation of such Person for borrowed money, (b) any obligation of such Person evidenced by a bond, debenture, note or other similar instrument, (c) any obligation of such Person to pay the deferred purchase price of property or services, except a trade account payable that arises in the ordinary course of business but only if and so long as the same is payable on customary trade terms, (d) any obligation of such Person as lessee which are capitalized in accordance with Generally Accepted Accounting Principles, (e) any non-contingent obligation of such Person to reimburse any other Person in respect of amounts paid under a letter of credit or other guaranty issued by such other Person to the extent that such reimbursement obligation remains outstanding after it becomes non-contingent, (f) any Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a lien on any asset of such Person, and (g) any Indebtedness of others guaranteed by such Person.

“*Person*” means any individual, sole proprietorship, corporation, partnership, trust, unincorporated organization, mutual company, joint stock company, estate, union, employee organization, government or any agency or political subdivision thereof.

“**Secured Obligations**” means the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code (and any successor provision thereof)) of all of the Obligations (as defined in Section 7(a) below) and any other loans, advances, debts, liabilities, obligations, guaranties and indebtedness at any time owing by the Payor to the Payee.

“**Solvent**” means, with respect to any Person on any date of determination, that on such date (i) the sum of the debt (including contingent liabilities) of such Person and its subsidiaries, taken as a whole, does not exceed the present fair saleable value of the assets of the Person and its subsidiaries, taken as a whole; (ii) the capital of such Person and its subsidiaries, taken as a whole, is not unreasonably small in relation to the business of such Person and its subsidiaries, taken as a whole, contemplated as of the date hereof; and (iii) such Person and its subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“**Tax**” means any federal, state or foreign tax, assessment or other governmental charge (including any withholding tax) upon a Person or upon its assets, revenues, income or profits.

2. Interest. No interest shall accrue on this Note; provided, that if any payment of the Principal Amount is not paid when due, such overdue amount shall bear simple interest, after as well as before judgment, at a rate per annum equal to 10.0%, computed on the basis of the actual number of days elapsed in a year of 365 days.

3. Principal. The Principal Amount shall be repaid in the amounts and on such dates as set forth in Schedule A attached hereto. In the event that any payment of the Principal Amount is not paid within 30 days after the date it is due, Payee may collect, and Payor agrees to pay with such payment, a late “charge” of 5% of the payment amount. Such late charge represents the reasonable estimate by Payee and Payor of a fair average compensation due to the failure of Payor to make timely payments. Such late charge shall be paid without prejudice to the rights of the Payee to collect any other amounts provided to be paid or to declare a default under this Note.

4. Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to the Principal Amount, including all charges or fees in connection therewith deemed in the nature of interest under Applicable Law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Note at any time exceeds the Highest Lawful Rate, the outstanding Principal Amount shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Note had at all times been in effect. In addition, if when the Principal Amount is repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Note had at all times been in effect, then to the extent permitted by law, the Payor shall pay to the Payee an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Payee and the Payor to conform strictly to any applicable usury laws. Accordingly, if the Payee contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled

automatically and, if previously paid, shall at such Payee's option be applied to the outstanding Principal Amount made hereunder or be refunded to the Payor.

5. Prepayments. The Payor may prepay this Note at any time, without premium or penalty, in cash in whole or in part. Any partial repayment of this Note shall be applied first to accrued but unpaid interest and fees until paid in full and then to the repayment of principal.

6. Payments. All payments due to the Payee hereunder shall be made to the Payee as directed by the Payee in writing. Any payment made by the Payor hereunder after 12:00 noon (Austin, Texas time) shall be deemed to have been made on the following day. All payments due to the Payee hereunder, and all other terms, conditions, covenants and agreements to be observed and performed by the Payor hereunder, shall be made, observed or performed by the Payor without any reduction or deduction whatsoever, including any reduction or deduction for any set off, recoupment, counterclaim (whether sounding in tort, contract or otherwise) or Tax. Whenever any payment to the Payee hereunder would otherwise be due on a day that is not a Business Day, such payment shall instead be due on the next succeeding Business Day, as the case may be. If the date any payment hereunder is due is extended (whether by operation of the terms hereof, Applicable Law or otherwise), such payment shall bear interest for such extended time at the rate of interest applicable hereunder.

7. Security.

(a) This Note evidences the obligations of the Payor (i) to repay the principal amount of this Note, (ii) to pay interest, as herein provided, on the principal amount hereof remaining unpaid from time to time, and (iii) to pay other amounts, including, without limitation, in respect of the indemnities set forth herein, which may become due and payable hereunder as provided herein (collectively, such obligations are the "***Obligations***"). All Secured Obligations of the Payor shall constitute one general obligation of the Payor secured by all of the Collateral (as hereinafter defined). The Payor hereby grants to the Payee (together with its successors and assigns), to secure the payment and performance in full of all of the Secured Obligations, a continuing security interest in, and pledge to the Payee of, all of the Payor's right, title and interest in, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof or in which the Payor now has or at any time hereafter may acquire any right, title or interest. The Payor represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a valid, perfected security interest in the Collateral.

(b) For purposes of this Note, (i) "***Collateral***" means all of the Payor's right, title and interest in and to all real, mixed and personal property of the Payor, including the following, in each case whether now or hereafter existing, whether tangible or intangible, whether now owned or hereafter acquired and wherever the same may be located: (A) all Goods, Accounts, Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including patents, trademarks, service marks, copyrights, and other intellectual property), Payment Intangibles, Software, Commercial Tort Claims, Documents, Instruments (including any promissory notes), Chattel Paper (whether tangible or electronic), Farm Products, Fixtures, Letters of Credit Rights (whether or not the letter of credit is evidenced by a writing), Securities (including debt securities and other debt which is owing to the Payor, together all promissory notes and other instruments evidencing such debt), Intellectual Property, and all other Investment Property, Supporting Obligations, and financial assets, whether now owned or hereafter acquired, wherever located; (B) all Deposit Accounts, Securities Accounts, cash, Money, Securities and other investments therein, and all Security Entitlements in respect thereof; (C) all contract rights including advisory and/or management agreements, and all related fees and income including all management and advisory fees; (D) all of the Payor's books and Records 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; (E) all present and future claims, rights, interests, assets and properties of the Payor; and (F) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all supporting obligations, collateral security and guarantees given by any Person with respect to any of the foregoing; and (ii) all capitalized terms used in the definition of “Collateral” (and not otherwise defined herein) shall have the meaning ascribed to such terms in the Uniform Commercial Code, as in effect, from time to time, in the State of Delaware (the “Code”). For the avoidance of doubt, the Collateral shall include the Purchased Assets, as defined in the Asset Purchase Agreement, dated as of October 5, 2019, by and between the Payor and the Payee. Notwithstanding the definition of Collateral, two items that are excluded from the Collateral are (x) customer deposits and (y) customer prepayments.

(c) The Payor hereby authorizes the Payee to file a financing statement naming the Payor as “debtor” and the Payee as “secured party” in the appropriate filing office, which financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Payee may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Payee herein, including describing such property as “all assets” or “all personal property, whether now owned or hereafter acquired.” The Payor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements that the Payee may reasonably require.

(d) The Payor agrees, at its expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Payee may from time to time reasonably request in order to create and/or maintain the validity, perfection or priority of any security interest granted or purported to be granted hereby or to enable the Payee to exercise and enforce its rights and remedies hereunder with respect to any Collateral. The Payor agrees to notify promptly the Payee of any change in its corporate name or in the location of its chief executive office, its chief place of business or the office where it keeps its records.

8. Representations and Warranties. The Payor represents and warrants to the Payee, on the date hereof, that the following statements are true and correct:

(a) **Organization; Powers.** The Payor (i) is duly organized and validly existing under the laws of the jurisdiction of its incorporation, (ii) has all requisite authority to carry on its business as now conducted and to own and lease its property and (iii) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a material adverse effect.

(b) **Authorization; Enforceability.** The execution, delivery and performance of its obligations hereunder are within the Payor’s corporate powers and have been duly authorized by all necessary action on the part of the Payor. This Note has been duly executed and delivered by the Payor and constitutes a legal, valid and binding obligation of the Payor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) **No Conflicts.** The execution, delivery and performance by the Payor of the Payor’s obligations hereunder (i) do not require any consent or approval of, registration or filing with, or any other action by, any governmental authority, except (x) such as have been obtained or made and are in full force and effect, (y) filings necessary to perfect liens created hereunder and (z) consents, approvals, registrations,

filings, permits or actions the failure to obtain or perform which could not reasonably be expected to result in a material adverse effect, (ii) will not violate the organizational documents of the Payor, (iii) will not violate any requirement of law except for violations that could not reasonably be expected to result in a material adverse effect, (iv) will not violate or result in a default or require any consent or approval under any indenture, agreement or other instrument binding upon the Payor or its property, or give rise to a right thereunder to require any payment to be made by the Payor, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a material adverse effect, and (v) will not result in the creation or imposition of any lien on the Collateral, except liens created hereunder.

(d) No Event of Default. No event has occurred and is continuing or would result from the making of the loan evidenced by this Note that would constitute an Event of Default.

(e) Title. Except for the Purchased Assets, Payor has no assets. Contingent on the accuracy of the representations and warranties of the Payee in the Purchase Agreement, Payor has good, sufficient and legal title to the Purchased Assets. Except as permitted by this Note, all such properties and assets are free and clear of liens.

(f) Solvency. The Payor is Solvent.

(g) Federal Reserve Regulations. The Payor is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying margin stock. No part of the proceeds of the loan evidenced by this Note will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board of Governors of the Federal Reserve System, including Regulation T, U or X.

(h) Investment Company Act. The Payor is not an “investment company” or a company “controlled” by an “investment company,” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(i) Security. The security interest of the Payee in the Collateral constitutes a valid, perfected security interest in and continuing lien on all of the right, title and interest in, to and under the Collateral.

9. Events of Default; Remedies. Each of the following occurrences shall constitute an event of default under this Note (herein called “*Event of Default*”):

(a) any payment of principal of or interest on this Note or any other amount payable hereunder shall not be made when and as due and in accordance with the terms hereof, which failure is not cured within 60 days after such missed payment; or

(b) the Payor shall fail to observe, perform or comply with any material covenant or agreement herein binding on it or shall fail to satisfy any material obligation in accordance with the terms of this Note (other than any covenant, agreement or obligation referred to in any other subsection of this Section 9), which failure is not cured within 30 days after written notice shall have been given by the Payee to the Payor requiring that such default be cured; or

(c) any of the representations or warranties contained herein shall prove to have been incorrect in any material respect when made; or

(d) (i) failure of the Payor to pay any principal of or interest on or any other amount payable in respect of any Indebtedness in excess of \$100,000 when due and payable (after giving effect to any grace periods applicable thereto); or (ii) breach or default by the Payor with respect to any material term of any other Indebtedness in excess of \$100,000 which is not cured or waived within 30 days; or

(e) the Payor shall (i) commence a voluntary case under any Debtor Relief Law (as now or hereafter in effect), (ii) file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Law or other laws, (iv) apply for, or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets, domestic or foreign, (v) admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due, (vi) make a general assignment for the benefit of creditors, or (vii) take any action for the purpose of effecting any of the foregoing; or

(f) any money judgment, writ or warrant of attachment or similar process involving (i) in any individual or aggregate at any time an amount in excess of \$100,000 (in each case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against the Payor or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(g) at any time after the execution and delivery hereof, (i) this Note ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or the satisfaction in full of the Secured Obligations in accordance with the terms hereof) or shall be declared null and void, or the Payee shall not have or shall cease to have a valid and perfected lien in any Collateral purported to be covered hereby with the priority required hereunder (except because of the failure of the Payee), or (ii) the Payor shall contest the validity or enforceability of this Note in writing or deny in writing that it has any further liability, including with respect to future advances by the Payee, under this Note, or (iii) the Payor shall contest the validity or perfection of any lien in any Collateral purported to be covered hereby.

During the continuance of any Event of Default (other than one specified in clause (e) above) and in every such event, the Payee, upon notice to the Payor, may declare, in whole or, from time to time, in part, the principal of and interest on this Note and all other amounts owing hereunder to be, and the same shall thereupon and to that extent become, due and payable. Upon the occurrence of an Event of Default specified in clause (e) above, automatically and without any notice to the Payor, the principal of and interest on this Note and all other amounts owing hereunder shall be due and payable. Presentment, demand, protest or notice of any kind (other than the notice provided for in the first sentence of this paragraph) are hereby expressly waived. If any Event of Default has occurred and is then continuing, the Payee may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Payee on default under the UCC (regardless of whether the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously: (i) require the Payor to, and the Payor hereby agrees that it shall at its expense and promptly upon request of the Payee forthwith, assemble all or part of the Collateral as directed by the Payee and make it available to the Payee at a place to be designated by the Payee that is

reasonably convenient to both parties; (ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process; (iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Payee deems appropriate; and (iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Payee's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Payee may deem commercially reasonable.

The Payee may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Payee shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Payee at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of the Payor, and the Payor hereby waives (to the extent permitted by Applicable Law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Payor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to the Payor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Payee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Payee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Payor hereby waives any claims against the Payee arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Payee accepts the first offer received and does not offer such Collateral to more than one offeree. If the Payee sells any of the Collateral upon credit, the Payor will be credited only with payments actually made by purchaser and received by the Payee and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Payee may resell the Collateral and the Payor shall be credited with proceeds of the sale. The Payee may sell the Collateral without giving any warranties as to the Collateral. The Payee may specifically disclaim or modify any warranties of title or the like, and such disclaimer shall not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, the Payor shall be liable for the deficiency and the reasonable fees of any attorneys employed by the Payee to collect such deficiency.

10. Notice. Any notices, consents, waivers, or other communications required or permitted to be given under the terms of this Note shall be given or delivered in writing (which shall include telecopy transmissions) at the following respective addresses and telecopier numbers and to the attention of the following individuals or departments or at such other address or telecopier or telephone number or to the attention of such other individual or department as the party to which such information pertains may hereafter specify:

(a) if to the Payor, to it at:

Upland Software, Inc.
Frost Bank Tower
401 Congress Avenue, Suite 1850
Austin, TX 78701-3788 USA

Attention: Kin Gill
kgill@uplandsoftware.com

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

Pillsbury Winthrop Shaw Pittman LLP
401 Congress Avenue, Suite 1700
Austin, TX 78701-3797

Attention: Steve Tyndall
Anthony Krueger
Steven.tyndall@pillsbury.com
Anthony.krueger@pillsbury.com

(b) if to the Payee, to it at:

LeadLander Corporation

Attention: Brett Habermann
Michael Hexner
bchabermann@yahoo.com
michaelhexner@gmail.com

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

California Business Counsel, P.C.

Attention: Jay Purcell
Matt Walding
jay@calbusinesscounsel.com
matt@santoswalding.com

Notices, communications and materials shall be deemed given or delivered when delivered or received at the appropriate address or telecopy number to the attention of the appropriate individual.

11. **Expenses; Indemnity.**

(a) The Payor agrees to pay or reimburse the Payee for all reasonable costs and expenses incurred by the Payee after the Closing Date (including the reasonable fees and other charges of counsel to the Payee) in connection with, arising out of, or in any way related to this Note and the transactions contemplated hereby, including amendments, waivers or other modifications thereto, as well as the protecting, enforcing or preserving of any rights or remedies under this Note.

(b) The Payor hereby agrees to indemnify and hold harmless the Payee and each related party of the Payee (each such Person being called an “*Indemnitee*”) from any losses, damages, liabilities, claims and related expenses (including the fees and expenses of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person other than such Indemnitee and its related parties arising out of, in connection with or resulting from this Note (including, without limitation, enforcement of this Note), whether brought by a third party or by the Payor, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to

the extent that such losses, claims, damages, liabilities or related expenses (i) resulted from the gross negligence or willful misconduct of such Indemnitee or (ii) result from a claim brought by the Payor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder, if the Payor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) To the fullest extent permitted by Applicable Law, the Payor hereby agrees not to assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Note or the transactions contemplated hereby. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Note or the transactions contemplated hereby by unintended recipients.

(d) All amounts due under this Section 11 shall be payable within 10 Business Days after written demand therefor.

12. Miscellaneous.

(a) Amendment; Modification; Waiver. This Note can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Payor and the Payee. A waiver signed by the Payee shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Payee's rights or remedies. All rights and remedies of the Payee under this Note shall be cumulative and may be exercised singularly or concurrently, at the Payee's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

(b) Successors and Assigns. This Note shall be binding upon and inure to the benefit of the Payor and the Payee and their respective participants, successors, and permitted assigns and shall take effect when signed by the Payor, and the Payor waives notice of the Payee's acceptance hereof; provided, however, that the Payor's rights hereunder may not be transferred or assigned to any third party without the prior written consent of the Payee.

(c) Governing Law; Submission to Jurisdiction. This Note shall be governed by the internal law of the State of Delaware without regard to conflicts of law provisions. Any legal action or proceeding with respect to this Note shall be brought exclusively in the courts of the State of Texas or of the United States of America sitting in Texas, and, by execution and delivery of this Note, the parties hereto hereby accept for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts.

(d) Severability. If any provision or application of this Note is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Note shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

(e) Survival. Except as otherwise expressly provided herein, the rights and obligations of the Payor and the Payee hereunder shall survive the payment of the principal and interest on this Note.

13. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT

OF ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

[Signature page follows]

This Note, dated November 15, 2019 embodies the entire agreement between the Payor and the Payee relating to the subject matter hereof and supersedes all prior agreements, representations and understandings, if any, relating to the subject matter hereof.

LEADLANDER CORPORATION, as Payor

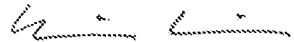
By: _____

Name: Brett Habermann

Title: Chief Executive Officer

Accepted and Agreed:

UPLAND SOFTWARE, INC., as Payee

By:  _____

Name: Kin Gill

Title: SVP, General Counsel and Secretary

This Note, dated November 15, 2019 embodies the entire agreement between the Payor and the Payee relating to the subject matter hereof and supersede all prior agreements, representations and understandings, if any, relating to the subject matter hereof.

LEADLANDER CORPORATION, as Payor

By: Brett C. Habermann
Brett C. Habermann (Nov 15, 2019)
Name: Brett Habermann
Title: Chief Executive Officer

Accepted and Agreed:

UPLAND SOFTWARE, INC., as Payee

By: _____
Name: _____
Title: _____

Schedule A

Principal Amount Due	Due Date
\$100,000	First Anniversary of Closing Date
\$200,000	Second Anniversary of Closing Date
\$200,000	Third Anniversary of Closing Date

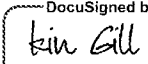
Bill of Sale

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Upland Software, Inc., a Delaware corporation (“**Seller**”), does hereby grant, bargain, transfer, sell, assign, convey and deliver to LeadLander Corporation (f/k/a LL Acquisition Company), a Delaware corporation (“**Buyer**”), all of its right, title, and interest in and to the tangible personal property included in the Purchased Assets, as such term is defined in the Asset Purchase Agreement, dated as of October 5, 2019 (the “**Purchase Agreement**”), by and between Seller and Buyer, to have and to hold the same unto Buyer, its successors and assigns, forever.

Buyer acknowledges that Seller makes no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Purchase Agreement.

IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale as of November 15, 2019.

UPLAND SOFTWARE, INC.

DocuSigned by:

By _____
Name: Kin Gill
Title: SVP, General Counsel and Secretary

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “*Agreement*”), effective as of November 15, 2019 (the “*Effective Date*”), by and between Upland Software, Inc., a Delaware corporation (“*Seller*”), and LeadLander Corporation, a Delaware corporation (“*Buyer*”).

WHEREAS, Seller and Buyer have entered into a certain Asset Purchase Agreement, dated as of October 5, 2019 (the “*Purchase Agreement*”), pursuant to which, among other things, Seller has agreed to assign all of its rights, title and interests in, and Buyer has agreed to assume all of Seller’s duties and obligations under, the Material Contracts (as defined in the Purchase Agreement).

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

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.

2. Assignment and Assumption. Seller hereby sells, assigns, grants, conveys and transfers to Buyer all of Seller’s right, title and interest in and to the Material Contracts. Buyer hereby accepts such assignment and assumes all of Seller’s duties and obligations under the Material Contracts and agrees to pay, perform and discharge, as and when due, all of the obligations of Seller under the Material Contracts accruing on and after the Effective Date.

3. Terms of the Purchase Agreement. The terms of the Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Material Contracts are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

UPLAND SOFTWARE, INC.

DocuSigned by:
Kin Gill
By _____
Name: Kin Gill
Title: SVP, General Counsel and
Secretary

LEADLANDER CORPORATION

By _____
Name: Brett Habermann
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

UPLAND SOFTWARE, INC.

By _____

Name:

Title:

LEADLANDER CORPORATION

Brett C. Habermann
Brett C. Habermann (Nov 15, 2011)

By _____

Name: Brett Habermann

Title: Chief Executive Officer

NON-COMPETITION AND NON-SOLICITATION AGREEMENT

This NON-COMPETITION AND NON-SOLICITATION AGREEMENT (this “*Agreement*”), dated as of the Closing Date, is entered into between Upland Software, Inc., a Delaware corporation (“*Seller*”) and LeadLander Corporation, a Delaware corporation (“*Buyer*”).

RECITALS

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement, dated as of October 5, 2019 (the “*Purchase Agreement*”, a copy of which is attached hereto as Exhibit A), pursuant to which Buyer has agreed to purchase from Seller, and Seller has agreed to sell to Buyer, the Purchased Assets, as set forth in the Purchase Agreement;

WHEREAS, Seller will derive benefits, economic or otherwise, from the sale of the Purchased Assets to Buyer;

WHEREAS, Buyer has requested, as a condition of Buyer’s willingness to enter into, and perform its obligations under, the Purchase Agreement, that Seller enter into this Agreement; and

WHEREAS, in order to induce Buyer to enter into the Purchase Agreement, Seller has agreed to enter into this Agreement.

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

1. **Capitalized Terms.** Capitalized terms used in this Agreement, but not otherwise defined herein, shall have the meanings ascribed to them in the Purchase Agreement.
2. **Non-Competition.** For a period of ten (10) years from the Closing Date (the “*Non-Competition Period*”), Seller shall not, and shall cause its Affiliates not to, directly or indirectly, enter into any line of business that is competitive with the Services being provided by the Seller as of the Closing Date reaching customers and clients with principal executive officers in the United States, Canada, the European Union, Japan and China (the “*Restricted Business*”). Notwithstanding the foregoing, nothing herein shall prohibit Seller or any of its Affiliates from (i) owning shares of any class of securities of the Seller and the Seller’s Affiliates, (ii) being a passive owner of not more than three percent (3%) of the outstanding shares of any class of securities of a Person that, directly or indirectly, engages in the Restricted Business, (iii) performing services for, licensing patents to, or receiving services from Buyer or any of its Affiliates pursuant to the Transaction Documents, or (iv) selling products to, servicing, soliciting, or receiving products or services from or otherwise engaging in any commercial activities with (in each case, in the ordinary course of business) a Person engaged in the Restricted Business or any customer, supplier, licensor or licensee of the Restricted Business or Buyer so long as neither Seller nor any of its Affiliates engages in or participates in the Restricted Business.
3. **Non-Solicitation.** During the Non-Competition Period, Seller shall not, and shall cause its Affiliates not to, (a) directly or indirectly, hire, engage or employ (as an employee, consultant or otherwise) any Key Employee or other employees of Buyer working in a management or senior-level position for Buyer (collectively, “*Buyer Employees*”), (b) through any director or officer of Seller, directly or indirectly, solicit for employment or the engagement of services of any Buyer Employee or induce or attempt to induce any Buyer Employee to leave his or her employment with Buyer, or in any way intentionally interfere with the employment relationship between any Buyer Employee and Buyer or any Affiliate of Buyer, in each case for the purpose of employing or engaging the services of such Buyer Employee or soliciting such Buyer Employee to become an employee or consultant of Seller or its Affiliates or any other Person; provided, however, that nothing herein shall preclude Seller or its Affiliates from employing or soliciting any Buyer Employee (i) who independently responds to any public advertisement or general solicitation (such as a

newspaper advertisement or internet posting) not specifically targeting such Buyer Employee, or (ii) following the termination of such Buyer Employee's employment with Buyer for any reason, provided, that Seller has not induced such Buyer Employee to terminate his or her employment in breach of Seller's obligations hereunder, or (c) take any action or attempt to take any action with the intent of impairing any material relationship, contractual or otherwise, between the Buyer and any of Buyer's customers, suppliers, consultants, independent contractors, distributors or resellers.

4. **Confidentiality**. Seller and Buyer shall keep this Agreement and its terms confidential, but any party may make such disclosures as it reasonably considers are required by law.
5. **Reasonableness of Restrictions**. Seller acknowledges and agrees that the restrictive covenants contained herein are necessary for the protection of the business investment by Buyer in the acquisition of the Purchased Assets pursuant to the Purchase Agreement and are reasonable in terms of time, geographic area, scope and content.
6. **Severability**. Any term or provision of this Agreement that a court deems invalid or unenforceable in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, Buyer and Seller agree that the body making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.
7. **Remedies**. Each of Buyer and Seller acknowledges and agrees that the other party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. It is accordingly agreed that (i) the parties shall be entitled to (in a court of competent jurisdiction or in binding arbitration as set forth in Section 13) an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, without bond or other security being required, this being in addition to any remedy to which they are entitled under this Agreement, and (ii) the right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, neither Seller nor Buyer would have entered into this Agreement. Each of Seller and Buyer acknowledges and agrees that each Party shall be entitled to monetary damages for a willful or intentional breach of this Agreement. In no event shall any party be responsible and liable for any monetary damages or other amounts under this Agreement that are special, indirect, incidental, consequential, exemplary or punitive damages.
8. **Successors and Assigns**. This Agreement shall inure to the benefit of Buyer and its successors and assigns, shall be binding upon Seller and its successors and assigns.
9. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all promises, representations, understandings, warranties, covenants and agreements with reference to the subject matter hereof and inducements to the making of this Agreement relied upon by any party hereto have been expressed.
10. **Termination, Amendments, and Waivers**. This Agreement may be terminated by the mutual agreement of Buyer and Seller. No such termination or any amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by both Buyer and Seller. No failure on the part of Buyer to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. Notwithstanding the forgoing, and not before the thirty (30)-month anniversary of the Closing Date, this Agreement shall automatically, without any action by either party, terminate upon

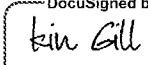
the change of control of the Buyer, whether by merger, stock sale, reorganization, acquisition, sale, or otherwise, and Buyer shall notify Seller of such change of within 15 days of its consummation.

11. **Construction.** Buyer and Seller acknowledge and agree that (a) each party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.
12. **Notices.** Section 10.02 of the Purchase Agreement is incorporated by reference.
13. **Governing Law; Arbitration.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial or other Arbitration Rules in Austin, Texas, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
14. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF EITHER PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.
15. **Costs and Expenses.** In the event of litigation or arbitration relating to this Agreement, the non-prevailing party shall be liable and pay to the prevailing party the reasonable costs and expenses (including attorney's fees) incurred by the prevailing party in connection with such litigation or arbitration, including any appeal therefrom.
16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
17. **Anti-Assignment.** Neither Seller nor Buyer shall assign any of its rights hereunder without the prior written consent of the other party. Any purported assignment in violation of this Section 17 shall be null and void.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

UPLAND SOFTWARE, INC.

DocuSigned by:

By: _____
Name: Kin Gill
Title: SVP, General Counsel and Secretary

LEADLANDER CORPORATION

Brett C. Habermann
By: *Brett C. Habermann (Nov 15, 2018)*
Name: Brett Habermann
Title: Chief Executive Officer

Index of Exhibit

Exhibit A *Asset Purchase Agreement*

TRANSITION SERVICES AGREEMENT

This Transition Services Agreement, dated as of November 15, 2019 (this “*Agreement*”), is entered into between Upland Software, Inc., a Delaware corporation (“*Seller*”), and LeadLander Corporation (f/k/a LL Acquisition Company), a Delaware corporation (“*Buyer*”).

RECITALS

WHEREAS, Buyer and Seller have entered into that certain Asset Purchase Agreement, dated as of October 5, 2019 (the “*Purchase Agreement*”), pursuant to which Seller has agreed to sell and assign to Buyer, and Buyer has agreed to purchase and assume from Seller, the Purchased Assets (as such term is defined in the Purchase Agreement) and certain obligations relating thereto, all as more fully described therein;

WHEREAS, in order to ensure an orderly transition of the Purchase Assets to Buyer, as a material inducement for Buyer to pay the Purchase Price to Seller and as a condition to consummating the transactions contemplated by the Purchase Agreement, Buyer and Seller have agreed to enter into this Agreement, pursuant to which Seller will provide, or cause its Affiliates to provide, Buyer with certain services, in each case on a transitional basis and subject to the terms and conditions set forth herein; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth, Buyer and Seller hereby agree as follows:

ARTICLE I TRANSITION SERVICES

Section 1.01 Provision of Services.

(a) Seller agrees to provide, or to cause its Affiliates to provide, the services set forth on the exhibits attached hereto (as such exhibits may be amended or supplemented pursuant to the terms of this Agreement, collectively, the “*Service Exhibits*”) to Buyer for the respective periods and on the other terms and conditions set forth in this Agreement and in the respective Service Exhibits (the “*Transition Services*”).

(b) Notwithstanding the contents of the Service Exhibits, Seller agrees to respond in good faith to any commercially reasonable request by Buyer for access to any additional services that are necessary for the operation of the provision of the Services and that are not currently contemplated in the Service Exhibits, at a price to be agreed upon after good faith negotiations between the parties. Any such additional services Seller agrees in writing to provide shall

constitute Transition Services under this Agreement and be subject in all respect to the provisions of this Agreement as if fully set forth on a Service Exhibit as of the date hereof.

(c) The parties hereto acknowledge the transitional nature of the Transition Services. Accordingly, as promptly as practicable following the execution of this Agreement, Buyer agrees to use commercially reasonable efforts to make a transition of each Transition Service to its own internal organization or to obtain alternate third-party sources to provide the Transition Services.

(d) Subject to **Section 2.03**, **Section 2.04** and **Section 3.05**, the obligations of Seller under this Agreement to provide Transition Services shall terminate with respect to each enumerated item on the Service Exhibit on the end date specified in the applicable Service Exhibit (the “**End Date**”). Notwithstanding the foregoing, the parties acknowledge and agree that Buyer may determine from time to time that it does not require all the Transition Services set out on one or more of the Service Exhibits or that it does not require such Transition Services for the entire period up to the applicable End Date. Accordingly, Buyer may terminate any Service, in whole and not in part, upon notification to Seller in writing of any such determination.

Section 1.02 Standard of Service.

(a) Seller represents, warrants and agrees that the Transition Services shall be provided in good faith, in accordance with Law (other than as would not have a material adverse effect on Buyer) and, except as specifically provided in the Service Exhibits, in a manner generally consistent with the historical provision of the Transition Services. Subject to **Section 1.03**, Seller agrees to assign commercially reasonable resources and personnel to perform the Transition Services in accordance with the standards set forth in the preceding sentence.

(b) Except as expressly set forth in **Section 1.02(a)** or in any contract entered into hereunder, Seller makes no representations and warranties of any kind, implied or expressed, with respect to the Transition Services, including, without limitation, no warranties of merchantability or fitness for a particular purpose, which are specifically disclaimed. Buyer acknowledges and agrees that this Agreement does not create a fiduciary relationship, partnership, joint venture or relationships of trust or agency between the parties and that all Transition Services are provided by Seller as an independent contractor.

Section 1.03 Third-Party Service Providers. It is understood and agreed that Seller has been retaining, and will continue to retain, third-party service providers to provide some of the Transition Services to Buyer. In addition, Seller shall have the right to hire other third-party subcontractors to provide all or part of any Transition Service hereunder.

Section 1.04 Access to Premises. In order to enable the provision of the Transition Services by Seller, Buyer agrees that it shall provide to Seller’s and its Affiliates’ employees and any third-party service providers or subcontractors who provide Transition Services, at no cost to Seller, access to the facilities, assets and books and records, and Purchased Assets, in all cases to the extent necessary for Seller to fulfill its obligations under this Agreement. For avoidance of

doubt, Buyer shall not be required to reimburse Seller for any third party costs incurred in connection with its access to the facilities, assets and books and records, and Purchased Assets.

ARTICLE II COMPENSATION

Section 2.01 Responsibility for Wages and Fees. For such time as any employees of Seller or any of its Affiliates are providing the Transition Services to Buyer under this Agreement, (a) and the individuals performing Transition Services on behalf of Seller or its Affiliates shall not be deemed to be employees of Buyer for any purpose, and (b) Seller or such Affiliate, as applicable, shall be solely responsible for the payment and provision of all wages, bonuses and commissions, employee benefits, including severance and worker's compensation, and the withholding and payment of applicable Taxes relating to such individuals, unless the parties otherwise agree in writing. Seller and Seller alone will have responsibility for its charges, fees, subscription costs and other expenses arising from its provision of the Transition Services, including any costs for its service providers or its Affiliates' employees to travel to Buyer in the service of provisioning Transition Services.

Section 2.02 Terms of Payment. As full consideration for provision of the Transition Services (other than additional financial arrangements, if any, in connection with the provision of any additional Transition Services as may be mutually agreed upon), Buyer shall pay Seller \$290,000, payable as follows: (a) \$187,500, payable in cash by wire transfer of immediately available funds (to an account designated in writing by Seller to Buyer) on the later of the date hereof or November 15, 2019, and (b) \$102,500 payable in equal monthly installments in accordance with Schedule A attached hereto (the "*TSA Fees*"). The parties may agree to additional financial arrangements in connection with the provision of additional Transition Services in accordance with this Agreement. Buyer may deduct from the TSA Fees any actual documented costs incurred from salesforce and Zendesk contractors in connection with providing Services up to an aggregate amount of \$12,500; provided however, Buyer shall submit to Seller invoices or evidence of such costs, at least 2 Business Days prior to making any deduction.

Section 2.03 Extension of Transition Services. The parties agree that Seller shall not be obligated to perform any Transition Service after the applicable End Date; *provided, however*, that if Buyer desires and Seller agrees to continue to perform any of the Transition Services after the applicable End Date, the parties shall negotiate in good faith such requested extension, including the financial arrangements related thereto. Unless otherwise provided in a writing agreed to by the parties hereto, the Transition Services performed by Seller after the applicable End Date shall continue to constitute Transition Services under this Agreement and be subject in all respects to the provisions of this Agreement for the duration of the agreed-upon extension period.

Section 2.04 Terminated Transition Services. Upon termination or expiration of any or all Transition Services pursuant to this Agreement, or upon the termination of this Agreement in its entirety, Seller shall have no further obligation to provide the applicable terminated Transition Services and Buyer will have no obligation to pay any future compensation relating to such

Transition Services (other than for or in respect of Transition Services already provided in accordance with the terms of this Agreement and received by Buyer prior to such termination).

Section 2.05 No Right of Setoff. Each of the parties hereby acknowledges that it shall have no right under this Agreement to offset any amounts owed (or to become due and owing) to the other party, whether under this Agreement, the Purchase Agreement or otherwise, against any other expense incurred by it or amount owed (or to become due and owing) to it by the other party.

Section 2.06 Taxes. Buyer shall be responsible for all sales or use Taxes imposed or assessed as a result of the provision of Transition Services by Seller.

ARTICLE III TERMINATION

Section 3.01 Termination of Agreement. Subject to **Section 3.04**, this Agreement shall terminate in its entirety (i) on the date upon which Seller shall have no continuing obligation to perform any Transition Services as a result of each of their expiration or termination in accordance with **Section 1.01(d)** or **Section 3.02** or (ii) in accordance with **Section 3.03**.

Section 3.02 Breach. Any party (the “*Non-Breaching Party*”) may terminate this Agreement with respect to any Transition Service, in whole but not in part, at any time upon prior written notice to the other party (the “*Breaching Party*”) if the Breaching Party has failed (other than pursuant to **Section 3.05**) to perform any of its material obligations under this Agreement relating to such Transition Service, and such failure shall have continued without cure for a period of fifteen (15) days after receipt by the Breaching Party of a written notice of such failure from the Non-Breaching party seeking to terminate such service. For the avoidance of doubt, non-payment by Buyer for the Transition Services provided by Seller in accordance with this Agreement and not the subject of a good-faith dispute shall be deemed a breach for purposes of this **Section 3.02**.

Section 3.03 Insolvency. In the event that either party hereto shall (i) file a petition in bankruptcy, (ii) become or be declared insolvent, or become the subject of any proceedings (not dismissed within sixty (60) days) related to its liquidation, insolvency or the appointment of a receiver, (iii) make an assignment on behalf of all or substantially all of its creditors, or (iv) take any corporate action for its winding up or dissolution, then the other party shall have the right to terminate this Agreement by providing written notice in accordance with **Section 6.01**.

Section 3.04 Effect of Termination. Upon termination of this Agreement in its entirety pursuant to **Section 3.01**, all obligations of the parties hereto shall terminate, except for the provisions of **Section 2.04**, **Section 2.05**, **Section 2.06**, **Article IV**, **Article V** and **Article VI**, which shall survive any termination or expiration of this Agreement.

Section 3.05 Force Majeure. The performance of any obligation of a party under this Agreement shall be suspended during the period and to the extent that the party is prevented or hindered from performing an obligation, or the other party is prevented or hindered from receiving

the benefit of such performance, due to any of the following causes beyond such party's reasonable control (such causes, "**Force Majeure Events**"): (i) acts of God, (ii) flood, fire or explosion, (iii) war, invasion, riot or other civil unrest, (iv) Governmental Order or Law, (v) actions, embargoes or blockades in effect on or after the date of this Agreement, (vi) action by any Governmental Authority, (vii) national or regional emergency, (viii) strikes, labor stoppages or slowdowns or other industrial disturbances, (ix) shortage of adequate power or transportation facilities, or (x) any other event which is beyond the reasonable control of such party. The party suffering a Force Majeure Event shall give notice of suspension as soon as reasonably practicable to the other party stating the date and extent of such suspension and the cause thereof, and the party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. Neither Buyer nor Seller shall be liable for the nonperformance or delay in performance of its respective obligations under this Agreement when such failure is due to a Force Majeure Event. The applicable End Date for any Transition Service so suspended shall be automatically extended for a period of time equal to the time lost by reason of the suspension.

ARTICLE IV CONFIDENTIALITY

Section 4.01 Confidentiality.

(a) During the term of this Agreement and thereafter, the parties hereto shall, and shall instruct their respective Representatives to, maintain in confidence and not disclose the other party's financial, technical, sales, marketing, development, personnel, and other information, records, or data, including, without limitation, customer lists, supplier lists, trade secrets, designs, product formulations, product specifications or any other proprietary or confidential information, however recorded or preserved, whether written or oral (any such information, "**Confidential Information**"). Each party hereto shall use the same degree of care, but no less than reasonable care, to protect the other party's Confidential Information as it uses to protect its own Confidential Information of like nature. Unless otherwise authorized in any other agreement between the parties, any party receiving any Confidential Information of the other party (the "**Receiving Party**") may use Confidential Information only for the purposes of fulfilling its obligations under this Agreement (the "**Permitted Purpose**"). Any Receiving Party may disclose such Confidential Information only to its Representatives who have a need to know such information for the Permitted Purpose and who have been advised of the terms of this **Section 4.01** and the Receiving Party shall be liable for any breach of these confidentiality provisions by such Persons; *provided, however,* that any Receiving Party may disclose such Confidential Information to the extent such Confidential Information is required to be disclosed by a Governmental Order, in which case the Receiving Party shall promptly notify, to the extent possible, the disclosing party (the "**Disclosing Party**"), and take reasonable steps to assist in contesting such Governmental Order or in protecting the Disclosing Party's rights prior to disclosure, and in which case the Receiving Party shall only disclose such Confidential Information that it is advised by its counsel in writing that it is legally bound to disclose under such Governmental Order.

(b) Notwithstanding the foregoing, “Confidential Information” shall not include any information that the Receiving Party can demonstrate: (i) was publicly known at the time of disclosure to it, or has become publicly known through no act of the Receiving Party or its Representatives in breach of this **Section 4.01**; (ii) was rightfully received from a third party without a duty of confidentiality; or (iii) was developed by it independently without any reliance on the Confidential Information.

(c) Upon demand by the Disclosing Party at any time, or upon expiration or termination of this Agreement with respect to any Transition Service, the Receiving Party agrees promptly to return or destroy, at the Disclosing Party’s option, all Confidential Information. If such Confidential Information is destroyed, an authorized officer of the Receiving Party shall certify to such destruction in writing. Buyer and Seller acknowledge, among the Purchased Assets are items of Confidential Information that, before the Closing, are the property of Seller, and after the Closing, will be the property of Buyer, including but not limited to customer lists and Services Data. Except for its nondisclosure and non-use obligations, notwithstanding the first sentence of this Section 4.01(c), after the Closing Seller may not exert control over, or make demands on, any Purchased Asset.

ARTICLE V LIMITATION ON LIABILITY

Section 5.01 Limitation on Liability. In no event shall a party have any liability under any provision of this Agreement for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple, whether based on statute, contract, tort or otherwise, and whether or not arising from the other party’s sole, joint, or concurrent negligence, strict liability, criminal liability or other fault. The parties acknowledge that the Transition Services to be provided hereunder are subject to, and that each party’s remedies under this Agreement are limited by, the applicable provisions of **Section 1.02**, including the limitations on representations and warranties with respect to the Transition Services. Buyer and Seller agree that but for Seller’s agreement to provide each Transition Service until its End Date, Buyer would not enter into the Purchase Agreement and would not enter into this Agreement. The parties agree that any Loss arising from breach or non-fulfillment of any covenant, agreement or obligation to be performed by pursuant to this Agreement is subject to the indemnification provisions contained at Sections 8.02(b) and 8.03(b) of the Purchase Agreement.

ARTICLE VI MISCELLANEOUS

Section 6.01 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by

facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 6.01**):

(a) if to Seller:

Upland Software, Inc.
Frost Bank Tower
401 Congress Avenue, Suite 1850
Austin, TX 78701-3788 USA
Attention: Kin Gill
Email: kgill@uplandsoftware.com

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

Pillsbury Winthrop Shaw Pittman LLP
401 Congress Avenue, Suite 1700
Austin, TX 78701-3797
Attention: Steven M. Tyndall
Email: Steve.tyndall@pillsbury.com

(b) if to Buyer:

LL Acquisition Company
Attention: Brett Habermann
Michael Hexner
Email: bchabermann@yahoo.com
Email: michaelhexner@gmail.com

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

California Business Counsel, P.C.
Attention: Jay Purcell
Matt Walding
Email: jay@calbusinesscounsel.com
Email: matt@santoswalding.com

Section 6.02 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 6.03 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 6.04 Entire Agreement. This Agreement, including all Service Exhibits, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event and to the extent that there is a conflict between the provisions of this Agreement and the provisions of the Purchase Agreement as it relates to the Transition Services hereunder, the provisions of this Agreement shall control.

Section 6.05 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 6.06 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 6.07 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 6.08 Governing Law; Arbitration. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial or other Arbitration Rules in Austin, Texas, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 6.09 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

UPLAND SOFTWARE, INC.

DocuSigned by:
Kin Gill
By _____
Name: Kin Gill
Title: SVP, General Counsel and
Secretary

LEADLANDER CORPORATION

By _____
Name: Brett Habermann
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

UPLAND SOFTWARE, INC.

By _____
Name: Kin Gill
Title: SVP, General Counsel and
Secretary

LEADLANDER CORPORATION

Brett C. Habermann
By Brett C. Habermann (Nov 15, 2018) _____
Name: Brett Habermann
Title: Chief Executive Officer

EXHIBIT A

Service Period term and termination. All Service Periods identified in this document shall commence on the Closing Date unless otherwise noted and continue through the end of the Service Period provided in the table below. Defined terms used in this document but not otherwise defined shall have the meanings provided in the Purchase Agreement. For purposes of clarity, in no event shall the Buyer receive any refund in the event of an early termination of any Service.

UPLAND SUPPORTS Buyer (LeadLander Business)

ID	Item	Description	Service Period	Owner / Expert	Service Fee
	All Functions				
R1	Sharepoint Sites	Buyer needs to own and migrate Sharepoint data and have sufficient access to export LeadLander data. LeadLander support and professional services staff use Sharepoint for their internal Wiki for processes, procedures, etc. Buyer needs continued access to this system and its owner/experts through the transition period to migrate the documentation to buyer's systems. Legacy LeadLander resources continue to have access to Sharepoint assets sufficient to continue running the business.	90	Greg Wood	Included in monthly service fee
R2	Flairstech / Crossover Contractors	Buyer needs continued use of Flairstech and Crossover Contractors according to the terms and conditions of the current executed agreement until buyer can enter into a new agreement with those vendors.	180	Sean Nathaniel/ Lou Takacs	Included in monthly service fee
	Sales, Product & Marketing				
R3	Salesforce.com	Buyer to continue with access to LeadLander Salesforce for 60 days. Once the transition period completes in 60 days or less, then the integration between LeadLander Salesforce and Upland Salesforce will be shut-down. Buyer will then own the LeadLander instance of Salesforce. Any payments of LeadLander's Salesforce licensing will need to be repaid to Upland on a pro-rated basis.	60	Greg Wood	Included in monthly service fee

ID	Item	Description	Service Period	Owner / Expert	Service Fee
R3.1	Website & Marketing	<p><u>Website</u>: make available to Buyer AWS hosting information and credentials/password; make available to Buyer necessary information to create production environment for testing; assist in migration of website off Upland domain to allow the new Buyer website (LeadLander) to become independent; provide 12-month link from Upland page to new LeadLander homepage, featuring message substantially similar to the following: <i>“Both companies felt it is in their mutual best interests to go back and remain partners; that for the growth of LeadLander and Upland, the independence of LeadLander would allow for more positive growth for both organizations”</i>); concerning the ‘free-trial’ click through form, provide development work to migrate process and data; within CXM, create a partner page;</p> <p><u>Social Media</u>: transition ownership of social media (twitter, LinkedIn, Facebook) for core product using Purchased Assets</p>	60 Days	<p>Kyle / Visile</p> <p>Julie Hsu and Melanie Angel</p>	Included in monthly service fee
Support					
R4	Zendesk	Continued access to and use of the LeadLander Zendesk instance, ticket data and the Upland Zendesk owner/expert during the transition period to allow for Buyer to setup LeadLander in their system and successfully migrate the ticket, KnowledgeBase, and customer data. The cutover /or release as part of the asset sale of the LeadLander Zendesk Ticket System will be within the 180-day transition period.	60 (tied to Kyle Petsch / Ahmed)	DJ Yoder	Included in monthly service fee
R5	Phone System & Support Phone Numbers	Continued access to LeadLander phone system used by LeadLander staff and the support phone numbers. As part of the asset sale, the phone, Grasshopper/voicemail system, and phone numbers are turned over to LeadLander	60	Dave Talbott	Included in monthly service fee
Facilities					
R6	Provision of Office Space	Seller will make available to Buyer the entire office space it leases in Marin County, California, without charge, through March 5, 2020. Seller will continue making lease payments and utility payments for the period ending March 5, 2020.	March 5, 2020	Kin Gill	Included in the monthly service fee

ID	Item	Description	Service Period	Owner / Expert	Service Fee
	Engineering / SaaSOps				
R7	Access to Engineering Resources	Buyer will need access to appropriate Upland DBA & Network Administrator resources for 180 days.	180	Rick Rinewalt	Included in monthly service fee
R8	Access to Data Centers	Data Center Hosting & Supervised Access Services: AWS: LeadLander production VPC LeadLander development VPC LeadLander stage VPC Account # 204697677297 660890095287 472783230659 Tool: Mongo Cloud Manager Service: Site 24x7	180	Rick Rinewalt	Included in monthly service fee
R9	Cloud Personnel Support	Support cloud ops at the current levels, with day to day personnel support. Transfer knowledge and train new resource for CloudOps/DevOps under Buyer. Agree on a plan to transfer knowledge within 180 days.	180	Rick Rinewalt	Included in monthly service fee
	Compliance				
R10	IT Policies & Procedures	Need the Information Security Program and the IT Policies and Procedures documents. Current version only.	90	Dave Talbott	None
R11	SSAE 16 / SOC 2 Reports	Provide Upland SSAE 16 / SOC 2	360	Dave Talbott	None
R12	Business Continuity / Disaster Recovery	Provide current version of business continuity and disaster recovery documents. Confirm colocation (VA & ____?)	180	Dave Talbott	None
	System Administration				

ID	Item	Description	Service Period	Owner / Expert	Service Fee
R13	Email Systems	Supervised access to email system(s) and support from Upland owner/expert for the same while transitioning asset of Office 365 to Buyer. Include all historical emails and email forwarding	180	Dave Talbott	None
R14	DNS and Domain system	Supervised access to the Domain and DNS systems & access to Upland owner/expert while transitioning to Buyer. Ensure that LeadLander is the contact company for all domain names, all registries, all renewals. Confirmation/notice of all renewal dates	180	Dave Talbott	None
	Accounting / Business Administration				
R15	Collections: Process	Need to establish and implement process whereby all LeadLander customer receipts received by Upland post close will be forwarded Buyer.	60	John Hinnners	None
R16	AP: Process	Need to establish and implement process whereby all vendor invoices received by Upland post close will be forwarded to Buyer.	60	John Hinnners	None
R17	Finance Data	Accounts Receivable aging reports by customer and by invoice.	60	John Hinnners	Included in monthly service fee
R18	Finance Data	Copies of all customer invoices appearing on AR aging report at acquisition.	60	John Hinnners	Included in monthly service fee
R19	Finance Data	Allowance for doubtful accounts calculation - detail by customer, by invoice.	60	John Hinnners	Included in monthly service fee
R20	Finance Data	Accounts Payable aging reports by vendor and by invoice.	60	John Hinnners	Included in monthly service fee
R21	Finance Data	Copies of all vendor invoices appearing on AP aging report at acquisition.	60	John Hinnners	Included in monthly service fee
R22	Finance Data	General ledger reconciliation to support all balance sheet accounts.	60	John Hinnners	Included in monthly service fee

ID	Item	Description	Service Period	Owner / Expert	Service Fee
R23	Finance Data	Fixed asset register at acquisition date.	60	John Hinners	Included in monthly service fee
R24	Finance Data	Deferred revenue by customer by invoice as on date of acquisition for invoiced revenue. Invoice date, amount and invoice period, revenue recognition start and end dates for ratable revenue. Recognition basis for non-ratable.	60	John Hinners	Included in monthly service fee
R25	Finance Data	Deferred revenue by customer by product and project (PS) as on date of acquisition for accrued revenue with matching unbilled revenue.	60	John Hinners	Included in monthly service fee
R26	Payroll Process	Provide payroll services for LeadLander employees for 90 days or less.	60	John Hinners	Included in monthly service fee
R27	Finance Data	Product code list with descriptions and revenue GL account mapping (Intacct Items).	60	John Hinners	Included in monthly service fee
R28	Finance Data	Complete vendor master template.	60	John Hinners	Included in monthly service fee
R29	Finance Data	Complete customer master template.	60	John Hinners	Included in monthly service fee
R30	Finance Resources	Provide support, assistance and Q&A training to ensure smooth transition and continuity of finance functions of the LeadLander for a period of 90 days. Such support will include, but may not be limited to, provision of financial schedules and supporting documentation as may reasonably be requested to support financial balances and transactions of LeadLander, access to personnel with knowledge of finance operations and day to day finance activities of LeadLander for Q&A and or training as may be required within reason by the Recipient.	60	John Hinners	Included in monthly service fee
R31	Data export requests not itemized in this document	Continued support for any data transfers necessary to run and transition the business.	60	John Hinners	Included in monthly service fee

SCHEDULE A

Due Date	Amount
30-Days after Closing	\$17,083.33
60-Days after Closing	\$17,083.33
90-Days after Closing	\$17,083.33
120-Days after Closing	\$17,083.33
150-Days after Closing	\$17,083.33
180-Days after Closing	\$17,083.35

Schedule 2.01

- Source code for LeadLander
- Source code for pay portal
- Zendesk
- Customer list
- Custom contracts
- Database data (LeadLander customer data)
- LeadLander.com, .net, .org, app.leadlander.com
- Data related to the Services under the Salesforce.com account
- Database data
- Customer // SFDC data
- Trademarks
- Material Contracts (other than the office lease for Seller's offices in Marin County, California)

Schedule 2.04

Purchase Price Allocation:

Class I: 0

Class II: 0

Class III: 0

Class IV: 0

Class V: 0

Class VI: \$500,000

Class VII: \$100,000

DISCLOSURE SCHEDULES
to the
ASSET PURCHASE AGREEMENT
by and between
UPLAND SOFTWARE, INC.
and
LEADLANDER CORPORATION,
Dated as of November 15, 2019

These Disclosure Schedules are being delivered by Upland Software, Inc., a Delaware corporation (“*Seller*”) to LeadLander Corporation, a Delaware corporation (“*Buyer*”) in connection with the Asset Purchase Agreement, dated as of October 5, 2019 (the “*Agreement*”), by and between Seller and Buyer. Capitalized terms that are used, but not otherwise defined, herein shall have the meanings ascribed to such terms in the Agreement, which definitions are hereby incorporated by reference herein.

These Disclosure Schedules are not intended to constitute, and shall not be construed as constituting, representations or warranties of Seller. Section references herein correspond to sections of the Agreement. Summaries of or references to documents (or sections of documents) herein are qualified in their entirety by the actual documents, as amended. The inclusion of any item or other information in these Disclosure Schedules will not be deemed an admission or acknowledgment, in and of itself, and solely by virtue of the inclusion of such item or information in these Disclosure Schedules, that (a) such item or information is required to be listed or disclosed on these Disclosure Schedules, (b) such item or information represents a material exception or fact, event or circumstance, (c) such item or information is or is not material or has had, or would reasonably be expected to result in, a Material Adverse Effect, (d) such item or information actually constitutes noncompliance with, or a violation of, any applicable law, contract or other topic to which such disclosure is applicable or (e) such item or information constitutes an admission or indication of liability or responsibility in connection with any pending, threatened or future matter or proceeding or that a violation, right of termination, default, liability or other obligation of any kind exists with respect to such item or information.

As several of the disclosures in these Disclosure Schedules are responsive to similar or overlapping representations, the disclosure of any fact, document or other matter set forth in one schedule, section or subsection of these Disclosure Schedules will be deemed to be disclosed by Seller for similar or overlapping representations, and will be deemed to apply to and qualify each section or subsection of the Agreement to which it corresponds as well as each other section or subsection of these Disclosure Schedules where such disclosure would be applicable.

The headings contained in the Disclosure Schedules, if any, are included for convenience only and are not intended to limit the effect of the disclosures contained in the Disclosure Schedules or to expand the scope of the information required to be disclosed in the Disclosure Schedules. In the event of a conflict between these Disclosure Schedules and the Agreement, the terms and conditions of the Agreement shall govern.

Section 4.03
No Conflicts; Consents

None.

**Section 4.06
Intellectual Property**

(i)

Trademarks:

LEADLANDER	US	Reg. No. 3671808	Registered: 8/25/2009	Subject to Security Interest by Credit Suisse AG
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Domain Names:

1. leadlander.com
2. clicklander.com
3. formalyzer.com
4. sf14g.com
5. tl813.com
6. trackalyzer.com

(ii)

None.

Section 4.07
Legal Proceedings; Governmental Orders; Tax Returns.

Section 4.07(a)

None.

Section 4.07(b)

None.

Section 4.08
Compliance With Laws; Data Privacy.

None.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “*Agreement*”) dated as of November 15, 2019, is entered into between Upland Software, Inc. and its Affiliates (collectively “*LICENSEE*”), and LeadLander Corporation, a Delaware corporation (“*LICENSOR*”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

WITNESSETH:

WHEREAS, LICENSOR and LICENSEE have entered into that certain Asset Purchase Agreement (“*Purchase Agreement*”), dated as of October 5, 2019, pursuant to which LICENSEE has agreed to sell the Purchased Assets to LICENSOR; and

WHEREAS, upon the closing of the Purchase Agreement, LICENSOR will be sole and exclusive owner of the product and services identified more fully in Schedule A attached hereto (the “*Licensed Products*”); and

WHEREAS, LICENSOR desires to grant LICENSEE the right, privilege and license to use the Licensed Products in connection with the closing of the Purchase Agreement; and

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

**ARTICLE I
LICENSE GRANT**

LICENSOR hereby grants to LICENSEE, a perpetual, non-exclusive, non-sublicensable, irrevocable license to use the Licensed Products. LICENSOR will provide the Licensed Products to LICENSEE in the same manner LICENSOR provides the Licensed Products to other customers, which includes, but is not limited to, providing support services.

**ARTICLE II
TERM OF THE AGREEMENT**

This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the date of closing the Purchase Agreement and shall extend for a term of ten years (the “*Term*”). Beginning on the last day of the Term, this Agreement will auto renew for additional, successive one-year terms, unless either Licensor or Licensee decline to auto-renew by providing the other party with thirty (30)-days’ notice.

This Agreement may terminate (i) at any time, upon written consent by LICENSEE and LICENSOR; (ii) at any time, upon 90-days written notice by one party to the other party following a breach of a material provision of this Agreement by the other

party, *provided* that, during the 90-day period, the breaching party has failed to cure such breach; and, (iii) during the Term, if the Non-Compete Agreement by and between Licensee and Licensor, dated on or around the date hereof, terminates.

**ARTICLE III
CONSIDERATION**

The Purchase Agreement serves as full consideration for this Agreement.

**ARTICLE IV
WARRANTIES & OBLIGATIONS**

Section 4.1 LICENSOR represents and warrants that it has the right and power to grant the licenses granted herein and that there are no other agreements with any other party in conflict herewith.

Section 4.2 LICENSOR represents and warrants that the Licensed Product, to the knowledge of the Licensor, does not infringe any valid right of any third party.

**ARTICLE V
JURISDICTION & DISPUTES**

Section 5.1 This Agreement shall be governed in accordance with the terms in Section 10.10 of the Purchase Agreement.

**ARTICLE VI
AGREEMENT BINDING ON SUCCESSORS**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

**ARTICLE VII
WAIVER**

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

**ARTICLE VIII
SEVERABILITY**

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

**ARTICLE IX
NO JOINT VENTURE**

Nothing contained herein shall constitute an arrangement regarding employment, joint venture or partnership.

**ARTICLE X
INTEGRATION**

This Agreement constitutes the entire understanding of the parties as it pertains to the Licensed Products, and, except for the Transaction Documents other than this Agreement, revokes and supersedes all prior agreements between the parties, including any option agreements which may have been entered into between the parties, and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. Except for the Transaction Documents, this Agreement shall take precedence over any other documents which may be in conflict with this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

UPLAND SOFTWARE, INC.

LEADLANDER CORPORATION

DocuSigned by:
Kin Gill
By: _____
Name: Kin Gill
Title: SVP, General Counsel and Secretary
Date: _____

By: _____
Name: Brett Habermann
Title: Chief Executive Officer
Date: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

UPLAND SOFTWARE, INC.

LEADLANDER CORPORATION

By: _____

By: *Brett C. Habermann*
Brett C. Habermann (Nov 15, 2013)

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A
Licensed Products

LeadLander is an online service and reporting tool that allows companies to track and identify website visitors. The services include, without limitation, any software code or scripts supplied by Licensor, applications used to access the services, LeadLander Content (as defined below), and services used or received by LeadLander.

“Leadlander Content” includes all data, images, drawings, photographs, text, content, messages, profiles and any and all other material and information that is provided as part of the services.

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
LL ACQUISITION COMPANY**

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:17 AM 10/16/2019
FILED 11:17 AM 10/16/2019
SR 20197569088 - File Number 7627940

LL Acquisition Company, a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), certifies that:

1. The name of the Corporation is LL Acquisition Company. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 26, 2019.

2. This Certificate of Amendment was duly adopted in accordance with Section 107 and Section 103(a)(1) of the General Corporation Law of the State of Delaware by the Sole Incorporator of the Corporation. This Certificate of Amendment is being filed pursuant to Section 241 of the General Corporation Law.

3. Article FIRST is amended and restated in its entirety to read as follows:

"FIRST: The name of this corporation is LeadLander Corporation (the "*Corporation*")."

4. Article FIFTH is amended and restated in its entirety to read as follows:

"FIFTH: The total number of shares of all classes of stock which the Corporation shall have the authority to issue is 20,000,000 shares of Common Stock, \$0.000001 par value per share ("**Common Stock**")."

* * *

IN WITNESS WHEREOF, LL Acquisition Company has caused this Certificate of Amendment to be signed by Jay Purcell, the Sole Incorporator of the Corporation, on October 15, 2019.

By: /s/ Jay Purcell

Name: Jay Purcell

Title: Sole Incorporator

CERTIFICATE OF INCORPORATION
OF
LL ACQUISITION COMPANY

FIRST: The name of this corporation is LL Acquisition Company (the “**Corporation**”).

SECOND: The address of the registered office of the Corporation in the State of Delaware is 2140 South Dupont Highway, in the City of Camden, Delaware, 19934. The name of its registered agent at such address is Paracorp Incorporated.

THIRD: The name and mailing address of the incorporator are as follows: Jay Purcell, California Business Counsel, Professional Corporation, 4302 Pickwick Circle, #217, Huntington Beach, CA 92649.

FOURTH: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FIFTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 10,000,000 shares of Common Stock, \$0.0001 par value per share (“**Common Stock**”).

SIXTH: Subject to any additional vote required by this Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SEVENTH: Subject to any additional vote required by this Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation. Each director shall be entitled to one vote on each matter presented to the Board of Directors.

EIGHTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

NINTH: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

TENTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Tenth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article Tenth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ELEVENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law. Any amendment, repeal or modification of the foregoing provisions of this Article Eleventh shall not (a) adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification or (b) increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

TWELFTH: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries (collectively “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article Twelfth will only be prospective and will not affect the rights under this Article Twelfth in effect at the time of the occurrence of any actions or omissions to act giving rise to liability. Notwithstanding anything to the contrary contained elsewhere in this Certificate of Incorporation, the affirmative vote of the shareholders, will be required to amend or repeal, or to adopt any provisions inconsistent with this Article Twelfth.

THIRTEENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation’s certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Thirteenth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Thirteenth (including, without limitation, each portion of any sentence of this Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

FOURTEENTH: For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Certificate of Incorporation), such repurchase may be made without regard to any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined therein) shall be deemed to be zero (0).

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IN WITNESS WHEREOF, this Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this September 26, 2019.

By: /s/ Jay Purcell
Incorporator