

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM656948

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
The Learning Network, Inc		03/31/2019	Corporation: CALIFORNIA
RECEIVING PARTY DATA			
Name:	Crescere Frameworks, LLC		
Doing Business As:			
Street Address:	29772 MacArthur Blvd, Ste. 225		
City:	Irvine		
State/Country:	CALIFORNIA		
Postal Code:	92612		
Entity Type:	Limited Liability Company: NORTH CAROLINA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	77045724	LEARNING.NET	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	9197551317		
Email:	trademarks@envisage.law		
Correspondent Name:	Anthony J. Biller		
Address Line 1:	2601 Oberlin Rd # 100		
Address Line 4:	Raleigh, NORTH CAROLINA 27608		
NAME OF SUBMITTER:	Anthony J. Biller		
SIGNATURE:	/Anthony J. Biller/		
DATE SIGNED:	06/30/2021		
Total Attachments: 49			
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files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the IP Assets and the IP Agreements (collectively, the "**Books and Records**"); and

- (m) all goodwill and the going concern value of the Business.

Section 2.02 Excluded Assets.

Notwithstanding Section 2.01, the Purchased Assets shall not include the following assets (collectively, the "Excluded Assets"):

- (a) Contracts, including IP Agreements, that are not Assigned Contracts (the "**Excluded Contracts**");
- (b) the corporate seals, organizational documents, minute books, share certificate books, corporate tax returns, books of account or other records having to do with the corporate organization of Vendor;
- (c) all Benefit Plans and assets attributable thereto;
- (d) the assets, properties and rights specifically set forth in Section 2.02(d) of the Disclosure Schedules;
- (e) the rights which accrue or will accrue to Vendor under the Transaction Documents;
- (f) all records, documentation, correspondence, attorney work-product and other materials and information relating to this Agreement, any other Transaction Documents or the transactions contemplated hereby, or otherwise involving, arising from or relating to the potential sale of Vendor or the Purchased Assets to any Person; and
- (g) all insurance policies.

Section 2.03 Assumed Liabilities.

Subject to the terms and conditions set forth herein, Purchaser shall assume and agree to pay, perform and discharge only the following Liabilities of Vendor (collectively, the "**Assumed Liabilities**"), and no other Liabilities:

- (a) all trade accounts payable of Vendor to third parties in connection with the Business that remain unpaid and are not delinquent as of the Closing Date and that either are reflected on the Interim Balance Sheet Date or arose in the Ordinary Course since the Interim Balance Sheet Date;
- (b) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the Ordinary Course and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Vendor on or before the Closing; and

- (c) all Liabilities of Vendor in respect of the Transferring Employees to the extent that such Liabilities are based on facts, circumstances or events that arise after the Closing on the Closing Date.

Section 2.04 Excluded Liabilities.

Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Purchaser shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Vendor or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (collectively, the “**Excluded Liabilities**”). Vendor shall, and shall cause each of its Affiliates (as applicable) to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following:

- (a) any Liabilities of Vendor arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers and others;
- (b) any Liabilities for Taxes payable by Vendor;
- (c) any Liabilities relating to or arising out of the Excluded Assets;
- (d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or before the Closing Date;
- (e) any Liabilities of Vendor in respect of the Transferring Employees to the extent that such Liabilities are based on facts, circumstances or events that arise on or before the Closing on the Closing Date and any Liabilities of Vendor in respect of other employees of Vendor including all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by Vendor of the employment of any employee who does not accept Purchaser's offer of employment referred to in Section 6.01(a);
- (f) any Liabilities related to the Environment or under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or before the Closing on the Closing Date or otherwise to the extent arising out of any actions or omissions of Vendor;
- (g) any trade accounts payable which are not Assumed Liabilities under Section 2.03(a);
- (h) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the Business' customers to Vendor on or before the Closing; (ii) did not arise in the Ordinary Course; or (iii) are not validly and effectively assigned to Purchaser under this Agreement, subject to Section 2.11;
- (i) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Vendor (including with respect to any

breach of obligations by such Person), except for indemnification of such Person under Section 8.03 as Vendor Indemnitees;

- (j) any Liabilities under the Excluded Contracts or any other Contracts, including IP Agreements, (i) which are not validly and effectively assigned to Purchaser under this Agreement; (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Vendor of such Contracts before Closing, subject to Section 2.11;
- (k) any Liabilities associated with debt, loans or credit facilities of Vendor or the Business owing to financial institutions; and
- (l) any Liabilities arising out of, in respect of or in connection with the failure by Vendor or any of its Affiliates to comply with any Law or Governmental Order.

Section 2.05 Purchase Price.

The aggregate purchase price for the Purchased Assets shall be \$1,250,000 (the “**Purchase Price**”), subject to adjustment under Section 2.06, which shall be paid by Purchase to Vendor. The Purchase Price shall be reduced by the amount of the Deposit (the “**Closing Amount**”) and the Closing Amount shall be paid by wire transfer of immediately available funds to an account designated in writing by Vendor to Purchaser on the Closing Date.

Section 2.06 Purchase Price Adjustment

(a) Post-Closing Adjustment

- (i) Within 60 days after the Closing Date, Purchaser shall prepare and deliver to Vendor (A) a statement setting forth its calculation of Closing Working Capital, which statement shall be substantially in the form of Section 2.06(a)(i) of the Disclosure Schedules (the “**Closing Working Capital Statement**”), and (B) a certificate of the Chief Financial Officer of Purchaser stating that the Closing Working Capital Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Financial Statements for the most recent financial year end for which such Closing Working Capital Statement was being prepared as of a financial year end, subject to the modifications and limitations set forth in Section 2.06(a)(i) of the Disclosure Schedules.
- (ii) The “**Post-Closing Adjustment**” shall be an amount equal to the Closing Working Capital minus \$150,000 (the “**Target Working Capital**”). If the Post-Closing Adjustment is a positive number, Purchaser shall pay to Vendor an amount equal to the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, Vendor shall pay to Purchaser an amount equal to \$0 minus the Post-Closing Adjustment (that is, an amount equal to the Target Working Capital minus the Closing Working Capital).

(b) Examination and Review

- (i) **Examination.** After receipt of the Closing Working Capital Statement, Vendor shall have 30 days (the “**Review Period**”) to review the Closing Working Capital Statement. During the Review Period, Vendor and Vendor’s Accountant shall have full access to the relevant books and records of Purchaser, the personnel of, and work papers prepared by, Purchaser or Purchaser’s Accountant to the extent that they relate to the Closing Working Capital Statement and to such historical financial information (to the extent in Purchaser’s possession) relating to the Closing Working Capital Statement as Vendor may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections, *provided that* such access shall be in a manner that does not interfere with the normal business operations of Purchaser.
- (ii) **Objection.** On or before the last day of the Review Period, Vendor may object to the Closing Working Capital Statement by delivering to Purchaser a written statement setting forth Vendor’s objections in reasonable detail, indicating each disputed item or amount and the basis for Vendor’s disagreement therewith (the “**Statement of Objections**”). If Vendor fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Vendor. If Vendor delivers the Statement of Objections before the expiration of the Review Period, Purchaser and Vendor shall negotiate to resolve such objections within 30 days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Purchaser and Vendor, shall be final and binding.
- (iii) **Resolution of Disputes.** If Vendor and Purchaser fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**” and any amounts not so disputed, the “**Undisputed Amounts**”) shall be submitted for resolution to the office of an impartial, nationally recognized firm of independent chartered professional accountants other than Vendor’s Accountant or Purchaser’s Accountant (the “**Independent Accountant**”) who, acting as an expert and not an arbitrator, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The Independent Accountant shall only decide the specific items under dispute by the parties and its decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.
- (iv) **Fees of the Independent Accountant.** The fees and expenses of the Independent Accountant shall be shared equally between Purchaser and Vendor.
- (v) **Determination by Independent Accountant.** The Independent Accountant shall make a determination as soon as practicable within 30

days (or such other time as the parties hereto shall agree in writing) after its engagement, and its resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

- (vi) **Payment of Post-Closing Adjustment.** Except as otherwise provided herein, any payment of the Post-Closing Adjustment, together with interest calculated as set forth below, shall (A) be due (x) within five (5) Business Days of acceptance of the applicable Closing Working Capital Statement or (y) if there are Disputed Amounts, then within five (5) Business Days of the resolution described in Section 2.06(b)(v); and (B) be paid by wire transfer of immediately available funds to such account as is directed by Purchaser or Vendor, as the case may be. The amount of any Post-Closing Adjustment shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to prime plus one percent (1%). Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.
- (c) **Adjustments for Tax Purposes.** Any payments made under this Section 2.06 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.07 Deposit.

- (a) A deposit of \$82,500 on account of the Purchase Price (the "**Deposit**") has been made by Purchaser, by payment of such amount to Vendor.
- (b) If Purchaser fails to complete this transaction by reason of the non-fulfilment by Vendor of any of the conditions set forth in Section 7.01 or Section 7.02, Vendor shall be not entitled to the Deposit and the Deposit shall be refunded to Purchaser no later than three (3) days after the Closing Date. If Purchaser fails to complete this transaction for any other reason, the Deposit may be retained by Vendor as liquidated damages.

Section 2.08 Allocation of Purchase Price.

Vendor and Purchaser agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on the allocation schedule attached hereto as Schedule 2.08 (the "**Allocation Schedule**"). Purchaser and Vendor agree that the values so attributed to the Purchased Assets are the respective fair market values thereof. Any adjustments to the Purchase Price under Section 2.06 or Section 8.06 shall be allocated in a manner consistent with the Allocation Schedule. Purchaser and Vendor agree to file all Tax returns (including amended returns and claims for refunds) and information reports in a manner consistent with the Allocation Schedule.

Section 2.09 Reserved.

Section 2.10 Reserved.

Section 2.11 Third-Party Consents.

To the extent that Vendor's rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Purchaser without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Vendor, at its expense, shall use its reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Purchaser's rights under such Purchased Asset so that Purchaser would not in effect acquire the benefit of all such rights, Vendor, to the maximum extent permitted by Law and the Purchased Asset and at Purchaser's sole expense, shall act after the Closing as Purchaser's agent to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset and at Purchaser's sole expense, with Purchaser in any other reasonable arrangement designed to provide such benefits to Purchaser, and Purchaser shall assume all obligations and burdens thereunder. Notwithstanding any provision in this Section 2.11 to the contrary, (a) Purchaser shall not be deemed to have waived its rights under Section 7.02(d) unless and until Purchaser either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at Closing, and (b) if and to the extent Vendor obtains consents from any third party to assign any Contract to Parent rather than Purchaser, Vendor shall have no liability under any theory of recovery if and to the extent such consent is later claimed to be invalid.

**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 electronically, at the Closing Time, on the Closing Date after all of the conditions to Closing set forth in Article VII are either satisfied or waived or at such other time, date or place as Vendor and Purchaser may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "Closing Date".

Section 3.02 Closing Deliverables

- (a) At the Closing, Vendor shall deliver to Purchaser the following:
 - (i) an assignment and assumption agreement in the form attached hereto as Exhibit A (the "**Assignment and Assumption Agreement**") duly executed by Vendor, effecting the assignment to and assumption by Purchaser of the Purchased Assets and the Assumed Liabilities;
 - (ii) assignments in the form attached hereto as Exhibit B (the "**IP Assignments**") duly executed by Vendor, transferring all of Vendor's right, title and interest in and to the IP Assets to Purchaser;
 - (iii) an Assignment and Assumption of Lease in the form attached hereto as Exhibit C (the "**Assignment and Assumption of Lease**") duly executed by Vendor;

- (iv) the Consulting Agreement in the form attached hereto as Exhibit D (the “**Consulting Agreement**”) duly executed by Terry Heiney;
 - (v) the Non-Competition Agreement duly executed by Terry Heiney and John Gibbons;
 - (vi) the Vendor Closing Certificate;
 - (vii) the certificates of the Secretary of Vendor required by Section 7.02(i) and Section 7.02(k); and
 - (viii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to this Agreement.
- (b) At the Closing, Purchaser shall deliver to Vendor the following:
- (i) the Closing Amount;
 - (ii) the Assignment and Assumption Agreement duly executed by Purchaser;
 - (iii) the Assignment and Assumption of Lease duly executed by Purchaser;
 - (iv) the Consulting Agreement duly executed by Purchaser;
 - (v) the Non-Competition Agreement duly executed by Purchaser;
 - (vi) the Purchaser Closing Certificate; and
 - (vii) the certificates of the Secretary of Purchaser required by Section 7.03(g) and Section 7.03(h).

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF VENDOR

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules (it being understood that disclosure with respect to a specific Section shall be deemed to be a disclosure for each other Section or sub-Section of the Disclosure Schedules to the extent it is reasonably apparent on its face that such disclosure is applicable to such other Sections or sub-Sections of the Agreement), Vendor represents and warrants to Purchaser that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Corporate Status.

Vendor is a corporation duly incorporated, validly existing and in good standing under the Law of the State of California and has not been discontinued or dissolved under such Law. No steps or proceedings have been taken to authorize or require such discontinuance or dissolution. Vendor has submitted all notices and returns of corporate information and all other filings required by applicable Law to be submitted by it to any Governmental Authority. Vendor has the corporate power and capacity to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Section 4.01 of the Disclosure Schedules sets forth each jurisdiction in which Vendor is licensed, registered or qualified as a foreign corporation to carry on business, and Vendor is duly licensed, registered or qualified as a foreign corporation and in good standing to carry on business in each jurisdiction in which the

ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing, registration or qualification necessary, except where the failure by Vendor to obtain such license, registration or qualification would not, individually or in the aggregate, have a Material Adverse Effect.

Section 4.02 Authority of Vendor.

Vendor has the corporate power and capacity to enter into this Agreement and the other Transaction Documents to which Vendor 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 Vendor of this Agreement and any other Transaction Document to which Vendor is a party, the performance by Vendor of its obligations hereunder and thereunder and the consummation by Vendor of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Vendor. This Agreement has been duly executed and delivered by Vendor, and (assuming due authorization, execution and delivery by Purchaser) this Agreement constitutes a legal, valid and binding obligation of Vendor enforceable against Vendor in accordance with its terms. When each other Transaction Document to which Vendor is or will be a party has been duly executed and delivered by Vendor (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Vendor enforceable against it in accordance with its terms.

Section 4.03 No Conflicts; Consents.

The execution, delivery and performance by Vendor 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) conflict with or result in a violation or breach of, or default under, any provision of the Articles of Incorporation, by-laws or shareholder agreement of Vendor;
- (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Vendor, the Business or the Purchased Assets;
- (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 or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or creates in any party the right to accelerate, terminate, modify or cancel any Assigned Contract or Permit to which Vendor is a party or by which Vendor or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or
- (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets.

No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Vendor 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.

Section 4.04 Financial Statements.

- (a) Complete copies of the Financial Statements and Interim Financial Statements of the Business are set forth in Section 4.04 of the Disclosure Schedules. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Financial Statements).
- (b) The Financial Statements are based on the books and records of the Business and fairly present in all material respects, the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated.

Section 4.05 Undisclosed Liabilities.

Vendor has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) those which have been incurred in the Ordinary Course consistent with past practice since the Balance Sheet Date and (c) liabilities pursuant to Contracts, which liabilities would not be required to be reflected in Financial Statements prepared in accordance with GAAP, and which individually and in the aggregate, would not have a Material Adverse Effect.

Section 4.06 Absence of Certain Changes, Events and Conditions.

Since the Balance Sheet Date, and other than in the Ordinary Course consistent with past practice, there has not been any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) declaration or payment of any dividends or distributions on or in respect of any of Vendor's shares or redemption, purchase or acquisition of Vendor's shares;
- (c) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (d) entry into any Contract that would constitute a Material Contract;
- (e) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the Ordinary Course consistent with past practice;
- (f) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet;
- (g) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;
- (h) transfer, assignment or grant of any licence or sub-licence of any material rights under or with respect to any IP Assets or IP Agreements;

- (i) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;
- (j) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;
- (k) material capital expenditures which would constitute an Assumed Liability;
- (l) imposition of any Encumbrance upon any of the Purchased Assets;
- (m) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any current or former employees, officers, directors, independent contractors or consultants of the Business, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee of the Business or any termination of any employees for which the aggregate costs and expenses exceed \$20,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, consultant or independent contractor of the Business;
- (n) hiring or promoting any individual (as the case may be) or hiring or promoting any employee except to fill a vacancy in the Ordinary Course;
- (o) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant of the Business, (ii) Benefit Plan, or (iii) Collective Agreement, in each case whether written or oral;
- (p) loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former directors, officers or employees of the Business;
- (q) adoption of any amalgamation, arrangement, reorganization, liquidation or dissolution or filing of an assignment or notice of intention to file a proposal in bankruptcy under any provisions of Law or the making of any bankruptcy order against it under such Law or any similar Law;
- (r) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business for an amount in excess of \$10,000, individually (in the case of a lease, each year) or \$20,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term); and
- (s) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 4.07 Material Contracts

- (a) Section 4.07(a) of the Disclosure Schedules lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which Vendor is a party or by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including brokerage contracts) listed or otherwise disclosed in Section 4.10(a) of the Disclosure Schedules and all IP Agreements set forth in Section 4.11(b) of the Disclosure Schedules, being "**Material Contracts**");

- (i) all Contracts involving aggregate consideration in excess of [\$20,000] and which, in each case, cannot be cancelled without penalty or without more than 90 days' notice;
 - (ii) all Contracts that require Vendor to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;
 - (iii) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, Environmental or other Liability of any Person;
 - (iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of shares, securities or assets of any other Person or any real property (whether by amalgamation, sale of shares, sale of assets or otherwise);
 - (v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;
 - (vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) that are not cancellable without material penalty or without more than 90 days' notice;
 - (vii) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including guarantees);
 - (viii) all Contracts with any Governmental Authority ("**Government Contracts**");
 - (ix) all Contracts that limit or purport to limit the ability of Vendor to compete in any line of business or with any Person or in any geographic area or during any period of time;
 - (x) all joint venture, partnership or similar Contracts;
 - (xi) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal, right of first offer or preferential or similar right to purchase any of the Purchased Assets;
 - (xii) all powers of attorney with respect to the Business or any Purchased Asset;
 - (xiii) all Collective Agreements; and
 - (xiv) any other Contract that is material to the Purchased Assets or the operation of the Business and not previously disclosed under this Section 4.07(a).
- (b) Each Material Contract is valid and binding on Vendor in accordance with its terms and is in full force and effect. None of Vendor or, to Vendor's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Purchaser. There are no material disputes pending or threatened under any Contract included in the Purchased Assets.

Section 4.08 Title to Purchased Assets.

Vendor has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances except for Permitted Encumbrances.

Section 4.09 Condition and Sufficiency of Assets.

Except as set forth in Section 4.09 of the Disclosure Schedules, the furniture, fixtures, machinery, equipment and other items of Tangible Personal Property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, ordinary wear and tear excepted, and to the Knowledge of Vendor, none of such furniture, fixtures, machinery, equipment and other items of Tangible Personal Property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted before the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business.

Section 4.10 Real Property

- (a) Section 4.10(a) of the Disclosure Schedules sets forth each parcel of real property leased by Vendor and used in or necessary for the conduct of the Business as currently conducted (together with all rights, title and interest of Vendor in and to leasehold improvements relating thereto, including security deposits, reserves or prepaid rents paid in connection therewith, collectively, the "**Leased Real Property**"), and a true and complete list of all leases, subleases, licences, concessions and other agreements (whether written or oral), including all amendments, extensions, renewals, guarantees, indemnities and other agreements with respect thereto, under which Vendor holds any Leased Real Property (collectively, the "**Leases**"). Vendor has made available to Purchaser a true and complete copy of each Lease. With respect to each Lease:
- (i) such Lease is valid, binding, enforceable and in full force and effect, and Vendor enjoys quiet, peaceful and undisturbed possession of the Leased Real Property;
 - (ii) Vendor is not in breach or default under such Lease, and no event has occurred or circumstance exists that, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Vendor has paid all rent due and payable under such Lease;
 - (iii) Vendor has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Vendor under any of the Leases and, to Vendor's Knowledge, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;




Section 4.11 Intellectual Property

- (a) Section 4.11(a) of the Disclosure Schedules lists all (i) IP Registrations, and (ii) IP Assets, including Software, that are not registered but that are material to the operation of the Business. All required filings and fees related to the IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all IP Registrations are otherwise in good standing. Vendor has made available to Purchaser true and complete copies of file histories, documents, certificates, examiners' reports, office actions, correspondence and other materials related to all IP Registrations in its possession.

- (b) Section 4.11(b) of the Disclosure Schedules lists all IP Agreements. Vendor has made available to Purchaser true and complete copies of all such IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each IP Agreement is valid and binding on Vendor in accordance with its terms and is in full force and effect. None of Vendor or, to Vendor's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of, or any intention to terminate, any IP Agreement. No event or circumstance has occurred that would constitute an event of default under any IP Agreement or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

- (c) Except as set forth in Section 4.11(c) of the Disclosure Schedules, Vendor is the sole and exclusive legal and beneficial, and with respect to the IP Registrations, registered, owner of all right, title and interest in and to the IP Assets, and has the valid right to use all other Intellectual Property used in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. Without limiting the generality of the foregoing, Vendor has entered into binding, written agreements with every current and former employee of Vendor, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to Vendor any ownership interest and right they may have in the IP Assets; and (ii) acknowledge Vendor's exclusive ownership of all IP Assets. Vendor has made available to Purchaser true and complete copies of all such agreements.
- (d) The IP Assets and Intellectual Property licensed under the IP Agreements are all of the Intellectual Property necessary to operate the Business as presently conducted. The consummation of the transactions contemplated in this Agreement will not result in the loss or impairment of, or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, Purchaser's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Business as currently conducted.
- (e) Vendor's rights in the IP Assets are valid, subsisting and enforceable. Vendor has taken all reasonable steps to maintain the IP Assets and to protect and preserve the confidentiality of all trade secrets included in the IP Assets, including requiring all Persons having access thereto to execute written non-disclosure agreements.
- (f) The conduct of the Business as currently and formerly conducted, and the IP Assets and Intellectual Property licensed under the IP Agreements as currently or formerly owned, licensed or used by Vendor, have not infringed, misappropriated, diluted or otherwise violated, and have not, do not and will not infringe, dilute, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. To Vendor's Knowledge, no Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any IP Assets.
- (g) To Vendor's Knowledge, there are no Actions (including any oppositions, interferences or re-examinations) settled, pending or threatened (including in the form of offers to obtain a licence): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by Vendor in connection with the Business; (ii) challenging the validity, enforceability, registrability or ownership of any IP Assets or Vendor's rights with respect to any IP Assets; or (iii) by Vendor or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of any IP Assets. Vendor is not subject to any outstanding or prospective Governmental Order (including any application or petition therefor) that does or would restrict or impair the use of any IP Assets.

Section 4.12 Accounts Receivable.

The Accounts Receivable reflected on the Interim Balance Sheet and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Vendor involving the sale of goods or the rendering of services in the Ordinary Course consistent with

past practice; (b) to Vendor's Knowledge, constitute only valid, undisputed claims of Vendor not subject to claims of set-off or other defenses or counter-claims other than normal cash discounts accrued in the Ordinary Course consistent with past practice; and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Business, are, to Vendor's Knowledge, collectible in full within 90 days after billing. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Business have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in notes to financial statements.

Section 4.13 Customers and Suppliers

- (a) Section 4.13(a) of the Disclosure Schedules sets forth with respect to the Business
 - (i) each customer who has paid aggregate consideration to Vendor for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two (2) most recent financial years (collectively, the "**Material Customers**"); and
 - (ii) the amount of consideration paid by each Material Customer during these periods. Except as set forth in Section 4.13(a) of the Disclosure Schedules, Vendor has not received any notice, and has no reason to believe, that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

- (b) Section 4.13(b) of the Disclosure Schedules sets forth with respect to the Business
 - (i) each supplier to whom Vendor has paid consideration for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two (2) most recent financial years (collectively, the "**Material Suppliers**"); and
 - (ii) the amount of purchases from each Material Supplier during these periods. Except as set forth in Section 4.13(b) of the Disclosure Schedules, Vendor has not received any notice that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.14 Insurance.

Section 4.14 of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workplace safety, vehicle, collision, fiduciary liability and other casualty and property insurance maintained by Vendor or its Affiliates and relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the "**Insurance Policies**"); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for Vendor since 2008. Except as set forth in Section 4.14 of the Disclosure Schedules, there are no claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Neither Vendor nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any Insurance Policies. All premiums due on the Insurance Policies have either been paid or, if not yet due, accrued. All Insurance Policies (x) are in full force and effect and enforceable in accordance with their terms; and (y) have not been subject to any lapse in coverage. None of Vendor or any of its Affiliates is in default under, or has otherwise failed to comply with, in any respect, any provision contained in any Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business

similar to the Business and are sufficient for compliance with all applicable Laws and Contracts to which Vendor is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Purchaser.

Section 4.15 Legal Proceedings; Governmental Orders

- (a) Except as set forth in Section 4.15(a) of the Disclosure Schedules, there are no Actions pending or, to Vendor's Knowledge, threatened against or by Vendor (i) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.
- (b) Except as set forth in Section 4.15(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business.

Section 4.16 Compliance with Laws; Permits

- (a) Except as set forth in Section 4.16(a) of the Disclosure Schedules, Vendor is complying with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.
- (b) All Permits required for Vendor to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Vendor and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 4.16(b) of the Disclosure Schedules lists all current Permits issued to Vendor that are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.16(b) of the Disclosure Schedules.

Section 4.17 Environmental Matters

- (a) The operations of Vendor with respect to the Business and the Purchased Assets are currently and have been: (i) in compliance with all applicable Environmental Laws; and (ii) Vendor possesses and is in compliance with all material Environmental Permits necessary to operate the Business.

Section 4.18 Benefit Plans

- (a) Section 4.18 of the Disclosure Schedules contains a true and complete list of all Benefit Plans and all documents that support each Benefit Plan.
- (b) Except as indicated in Section 4.18(b) of the Disclosure Schedules, there are no participating employers that have any obligations or Liabilities with respect to any Benefit Plan other than Vendor, and Vendor has no obligations or Liabilities under any Benefit Plan, including to provide benefits, to any Person who is not an employee, director or officer or former employee, director or officer of Vendor.

- (c) Each Benefit Plan is in compliance with and is, and has been, established, registered (where required by Law), administered, funded and invested with Law and the terms of such Benefit Plans including the terms of the documents that support such Benefit Plans.
- (d) With respect to each Benefit Plan, true and complete copies of each of the following documents, if applicable, have been made available to Purchaser: (i) the document(s) establishing the current terms of the Benefit Plan; and (ii) all other Contracts material to the Benefit Plan.
- (e) No Benefit Plan is a Pension Plan, and none of the Benefit Plans provide benefits beyond retirement or other termination of service to Transferring Employees or former employees of the Business or to the beneficiaries or dependents of such Transferring Employees or former employees.
- (f) Except as set forth in Section 4.18(f) of the Disclosure Schedules, Vendor does not have any obligation to pay any change-in-control, sale, completion, incentive, stay, retention and similar bonuses or payments to any current or former employee as a result of the transactions contemplated by this Agreement.
- (g) Each Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without Liabilities to Purchaser other than ordinary administrative expenses typically incurred in a termination event. Vendor has no commitment or obligation and has not made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or continue any Benefit Plan or any Collective Agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.
- (h) Except as set forth in Section 4.18(h) of the Disclosure Schedules, Vendor has not received any notice in writing of any pending investigations, and there are no pending or threatened investigations, by any Governmental Authority involving or relating to any Benefit Plan or any claims (except for claims for benefits payable in the Ordinary Course operation of the Benefit Plans) or Actions against Vendor in respect of any Benefit Plan.
- (i) Each individual who is classified by Vendor as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.

Section 4.19 Employment Matters

- (a) Section 4.19(a) of the Disclosure Schedules sets forth the list of Terminated Employees, which indicates: (i) the titles of all Terminated Employees together with the location of their employment; (ii) the date each Terminated Employee was hired; (iii) which Terminated Employees are subject to a written employment agreement with the Vendor; (iv) the annual wage of each Terminated Employee at the date of such list, any bonuses paid to each Terminated Employee since the end of Vendor's last completed financial year and before the date of such list and all other bonuses, incentive schemes, benefits, commissions and other compensation to which each Terminated Employee is entitled; (v) the vacation days to which each Terminated Employee is entitled on the date of such list; and (vi) the Terminated Employees that are not actively working on the date of this

Agreement due to leave of absence, illness, injury, accident or other disabling condition.

- (b) Section 4.19(b) of the Disclosure Schedules lists: (i) all Contracts with any Terminated Employee who is a manager or executive of the Business or is being provided with an annual compensation of more than \$25,000; and (ii) all Contracts that provide for severance, termination or similar payments or entitlements of more than \$10,000, including on a sale of the Business.
- (c) Correct and complete copies of all the Contracts set out in Section 4.19(b) of the Disclosure Schedules have been made available to Purchaser and templates of the Contracts that describe all of the terms of the Contracts relating to the list of Terminated Employees set out in Section 4.19(a) of the Disclosure Schedules have been made available to Purchaser.
- (d) No Terminated Employees are subject to any written employment contract with Vendor other than standard forms of offer letters of employment in the form provided to Purchaser. No Terminated Employees are subject to an oral employment contract with Vendor. The services provided by each of the Terminated Employees are terminable at the will of Vendor and any such termination would result in no liability to Vendor (other than ordinary administration expenses or with respect to benefits, other than bonuses, commissions or amounts under other compensation plans, that were previously earned, vested or accrued under Vendor's plans prior to the Closing).
- (e) Vendor has no direct liability with respect to any misclassification of any person as an independent contractor rather than as an employee, with respect to any employee leased from another employer or with respect to any employee currently or formerly classified as exempt from overtime wages.
- (f) Vendor is in compliance with all applicable Laws and regulations respecting employment, employment practices, terms and conditions of employment, worker classification, Tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime and penalties), record keeping (including wage statements), compensation, and hours of work, and in each case, with respect to all such employees: (i) has withheld and reported all amounts required by applicable Law and regulations or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistent with past practice).
- (g) Except as set forth in Section 4.19(g) of the Disclosure Schedules, Vendor is not currently, and has not been, a party to any Collective Agreement. No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Terminated Employees including by way of certification, interim certification, voluntary recognition, related employer or successor employer rights, or has applied or threatened to apply to be certified as the bargaining agent of any of the Terminated Employees.

- (h) Section 4.19(h) of the Disclosure Schedules lists: (i) all Persons who are currently performing services for the Business carried on by Vendor as independent contractors under any Contract; and (ii) the current rate of compensation and total fees paid during the 12-month period ending on February 28, 2019 of each such Person. Substantially all of such independent contractors provide services to Vendor in relation to the Business under standard form agreements, and a copy of each standard form agreement has been made available to Purchaser.
- (i) Except as disclosed in Section 4.19(i) of the Disclosure Schedules, no notice in writing has been received by Vendor of any complaint filed by any of its Terminated Employees or former employees against Vendor or any current or former director or officer thereof or is threatened or pending, claiming or alleging that Vendor has violated any Laws applicable to the Terminated Employee or human rights or of any complaints or Actions of any kind involving the Business or any of the Terminated Employees before any Governmental Authority, including a labour relations board, tribunal or commission.
- (j) Except as disclosed in Section 4.18(h) of the Disclosure Schedules, there is no notice of assessment, provisional assessment, reassessment, supplementary assessment, penalty assessment or increased assessment which the Vendor has received before the date of this Agreement during the past five years from any workplace safety and insurance or workers compensation board or similar Governmental Authority in any jurisdiction where the Business is carried on that remain unpaid.

Section 4.20 Taxes

There are no Encumbrances for Taxes upon any of the Purchased Assets except with respect to taxes not yet due and payable, and no event has occurred that, with or without the passage of time or the giving of notice, or both, could reasonably be expected to result in an Encumbrance for Taxes on any of the Purchased Assets. Nor is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

Section 4.21 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 Vendor.

Section 4.22 Full Disclosure

To Vendor's knowledge, no representation or warranty by Vendor in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any Transaction Document to which Vendor is a party contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Vendor that the statements contained in this Article V are true and correct as of the date hereof.

Section 5.01 Status of Purchaser.

Purchaser is a limited liability corporation organized and validly existing under the Laws of the State of North Carolina and has not been dissolved under such Law. No steps or proceedings have been taken to authorize or require such dissolution. Purchaser has submitted all notices and returns of information and all other filings required by applicable Law to be submitted by it to any Governmental Authority.

Section 5.02 Authority of Purchaser.

Purchaser has the power and capacity to enter into this Agreement and the other Transaction Documents to which Purchaser 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 Purchaser of this Agreement and any other Transaction Document to which Purchaser is a party, the performance by Purchaser of its obligations hereunder and thereunder and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and (assuming due authorization, execution and delivery by Vendor) this Agreement constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms. When each other Transaction Document to which Purchaser is or will be a party has been duly executed and delivered by Purchaser (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal, valid and binding obligation of Purchaser enforceable against it in accordance with its terms.

Section 5.03 No Conflicts; Consents.

The execution, delivery and performance by Purchaser 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) conflict with or result in a violation or breach of, or default under, any provision of the Articles of Organization and operating agreement of Purchaser; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Purchaser; or (c) require the consent, notice or other action by any Person under any Contract to which Purchaser 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 Purchaser 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.

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 Purchaser.

Section 5.05 Sufficiency of Funds.

Purchaser has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Closing Amount and consummate the transactions contemplated by this Agreement.

Section 5.06 Legal Proceedings.

There are no Actions pending or, to Purchaser's knowledge, threatened against or by Purchaser or any Affiliate of Purchaser that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 5.07 No other Representations and Warranties and Non-Reliance

Except for the specific representations and warranties expressly in this Agreement or in the Transaction Documents to which Vendor is a party and except to the extent of fraud or criminal or wilful misconduct, (a) Purchaser acknowledges and agrees that (i) Vendor is not making and has not made any other representation or warranty, express or implied, at law or in equity, in respect of Vendor, or the Business, the Purchased Assets, Assumed Liabilities, operations, prospects, or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any Purchased Assets, the nature or extent of any Assumed Liabilities, the prospects of the Business, the effectiveness or the success or any operations, or the accuracy or completeness of any documents, projections (which are forward looking statements and are based upon reasonable assumptions, but are subject to uncertainties and thus also material variation), material or other information (financial or otherwise) regarding Vendor furnished to Purchaser or its Representatives or made available to Purchaser or its Representatives in presentations or in any other form in expectation of, or in connection with, the transactions contemplated by this Agreement, or in respect of any other matter or thing whatsoever, and (ii) neither Vendor nor any director, officer, agent, Representative or employee of Vendor has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in this Agreement or in any Transaction Document to which Vendor is a party and subject to the limited remedies herein provided; (b) Purchaser specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that Vendor has specifically disclaimed and does hereby specifically disclaim any such other representation or warranty made by any Person; (c) Purchaser specifically disclaims any obligation or duty by Vendor to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties set forth in this Agreement or in any Transaction Document to which Vendor is a party; and (d) Purchaser is acquiring the Purchased Assets and assuming the Assumed Liabilities subject only to the specific representations and warranties set forth in this Agreement as further limited by the specifically bargained-for exclusive remedies as set forth in this Agreement and any specific representations and warranties set forth in the Transaction Documents to which Vendor is a party. Except for the representations and warranties contained in this Agreement or in any Transaction Document to which Purchaser is a party: (x) Purchaser makes no other express or implied representation or warranty with respect to itself or the transactions contemplated by this Agreement; and (y) Purchaser disclaims any such other representations or warranties.

ARTICLE VI COVENANTS

Section 6.01 Employees and Employee Benefits

- (a) Commencing on the Closing Date, Vendor shall terminate all employees of the Business who are actively at work on the Closing Date (the "**Terminated Employees**") and Purchaser shall offer employment, conditional on completion of the transactions contemplated by this Agreement, to each Terminated Employee on terms and conditions that are, in the aggregate, no less favourable than the

terms and conditions on which these employees are employed immediately before the Closing Date.

- (b) Vendor shall be solely responsible, and Purchaser shall have no obligations whatsoever, for any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Vendor at any time on or before the Closing Date, and Vendor shall pay all such amounts to all entitled Persons on or before the Closing Date.
- (c) Vendor shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health, accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or before the Closing Date. Vendor also shall remain solely responsible for all claims under the *Occupational Health and Safety Regulations* (California) (or the comparable legislation of any other jurisdiction) of any current or former employees, officers, directors, independent contractors or consultants of the Business that relate to events occurring on or before the Closing Date. Vendor shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.
- (d) Any Terminated Employees who accept offers of employment by Purchaser and who begin active employment with Purchaser as of the Closing Date (the “**Transferring Employees**”) shall cease to participate in all Benefit Plans.

Section 6.02 Confidentiality.

From and after the Closing Date, Vendor shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that Vendor can show that such information (a) is generally available to and known by the public through no fault of Vendor, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Vendor, any of its Affiliates or their respective Representatives from and after the Closing from sources who are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Vendor or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Vendor shall promptly notify Purchaser in writing and shall disclose only that portion of such information that Vendor is advised by its counsel in writing is legally required to be disclosed, *provided that* Vendor shall use its reasonable best efforts to obtain an appropriate injunction, protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 6.03 Personal Information Privacy.

Purchaser shall at all times comply with all Laws governing the protection of personal information with respect to Personal Information disclosed or otherwise provided to Purchaser by Vendor under this Agreement. Purchaser shall only collect, use or disclose such Personal Information for the purposes of investigating the Purchased Business as contemplated in this Agreement and completing the transactions contemplated in this Agreement.

Section 6.04 Non-Competition; Non-Solicitation

- (a) As an inducement for Purchaser to enter into this Agreement and the Transaction Documents and consummate the transactions contemplated thereby, and in connection with the sale of the Purchased Assets and Assumed Liabilities and the acquisition of the goodwill of Vendor's business (including the goodwill related to the Business and Purchased Assets) by Purchaser, for a period of two (2) years commencing on the Closing Date (the "**Restricted Period**"), Vendor shall not, and shall not permit any of its Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Business in the Territory including, without limitation, each city, county and state in which Vendor and its Affiliates transact the Business as of the Closing Date, in any capacity, including as a partner, shareholder, employee, principal, agent, trustee or consultant; or (iii) cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Business (including any existing or former client or customer of Vendor and any Person that becomes a client or customer of the Business after the Closing), or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. Notwithstanding the foregoing, Vendor and its Affiliates may own, directly or indirectly, solely as an investment, securities of any Person traded on any stock exchange if Vendor or such Affiliate is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 3% or more of any class of securities of such Person.
- (b) During the Restricted Period, Vendor shall not, and shall not permit any of its Affiliates to, directly or indirectly, hire or solicit any Terminated Employee or any Person who is or was employed in the Business during the Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation that is not directed specifically to any such employees; *provided that* nothing in this Section 6.04(b) shall prevent Vendor or any of its Affiliates from hiring (i) any employee whose employment has been terminated by Purchaser or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.
- (c) Agreeing to the provisions of this Section 6.04 is a material inducement for Purchaser to enter into this Agreement and the Transaction Documents and consummating the transactions contemplated thereby. The restrictions set forth in this Section 6.04 are intended to protect the business acquired by Purchaser and the goodwill associated therewith in connection with the purchase of the Purchased Assets and Assumed Liabilities. Vendor expressly agrees that Purchaser has a legitimate business interest justifying the restrictions contained herein, and Vendor further agrees that all of the conditions contained in this Section 6.04 are reasonable with respect to their duration and scope, and that such restrictions are reasonable and necessary to protect the legitimate interests of Purchaser.
- (d) The provisions of this Section 6.04 are severable, and the invalidity of any one or more of the provisions shall not affect or limit the enforceability of the remaining provisions. Should any provision be held unenforceable for any reason, the remaining provisions shall be enforced to the maximum extent permitted by Law. In addition, should any provision herein, however, be found null and void or

unenforceable by a court of competent jurisdiction, it is expressly agreed that Purchaser shall then be entitled to the maximum relief allowable by law as to geography, duration and scope of relief.

- (e) Vendor acknowledges that a breach or threatened breach of this Section 6.04 would give rise to irreparable harm to Purchaser, for which monetary damages would not be an adequate remedy, and hereby agrees that, in the event of a breach or a threatened breach by Vendor of any such obligations, Purchaser shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an interim or permanent injunction, specific performance and any other relief that may be available from a court of competent equitable jurisdiction (without any requirement to post bond or other security).

Section 6.05 Governmental Approvals and Consents

Vendor and Purchaser shall use their respective reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.03 and Section 5.03 of the Disclosure Schedules.

Section 6.06 Books and Records

- (a) To facilitate the resolution of any claims made against or incurred by Vendor before the Closing, or for any other reasonable purpose, for a period of five (5) years after the Closing, Purchaser shall:
 - (i) retain the Books and Records (including personnel files) relating to periods before the Closing in a manner reasonably consistent with the prior practices of Vendor; and
 - (ii) upon reasonable notice, afford Vendor's Representatives reasonable access (including the right to make, at Vendor's expense, photocopies), during normal business hours, to such Books and Records.
- (b) To facilitate the resolution of any claims made by or against or incurred by Purchaser after the Closing, or for any other reasonable purpose, for a period of five (5) years after the Closing, Vendor shall:
 - (i) retain the books and records (including personnel files) of Vendor that relate to the Business and its operations for periods before the Closing; and
 - (ii) upon reasonable notice, afford the Purchaser's Representatives reasonable access (including the right to make, at Purchaser's expense, photocopies), during normal business hours, to such books and records.
- (c) Neither Purchaser nor Vendor shall be obligated to provide the other party with access to any books or records (including personnel files) under this Section 6.06 where such access would violate any Law.

Section 6.07 Closing Conditions.

Prior to Closing, each party shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII.

Section 6.08 Public Announcements.

Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall 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 the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 6.09 Receivables.

From and after the Closing, if Vendor or any of its Affiliates receives or collects any funds relating to any Accounts Receivable or any other Purchased Asset, Vendor or its Affiliate shall remit such funds to Purchaser within five (5) Business Days after its receipt thereof. From and after the Closing, if Purchaser or its Affiliate receives or collects any funds relating to any Excluded Asset, Purchaser or its Affiliate shall remit any such funds to Vendor within five (5) Business Days after its receipt thereof.

Section 6.10 Reserved.

Section 6.11 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.

**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 before 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) Vendor shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.03, and Purchaser shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 5.03, in each case, in form and substance reasonably satisfactory to Purchaser and Vendor, and no such consent, authorization, order and approval shall have been revoked.

Section 7.02 Conditions to Obligations of Purchaser.

The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Purchaser's waiver, at or before the Closing, of each of the following conditions:

- (a) Other than the representations and warranties of Vendor set out in Section 4.01, Section 4.02, Section 4.04 and Section 4.21, the representations and warranties of Vendor set out in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and 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, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Vendor set out in Section 4.01, Section 4.02, Section 4.04 and Section 4.21 shall be true and correct in all respects on and as of the date hereof and on and 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, the accuracy of which shall be determined as of that specified date in all respects).
- (b) Vendor 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 before or on the Closing Date.
- (c) No Action shall have been commenced against Purchaser or Vendor, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.
- (d) All approvals, consents and waivers that are listed in Section 4.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Purchaser at or before the Closing.
- (e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.
- (f) Vendor shall have delivered to Purchaser duly executed counterparts of the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(a).
- (g) Purchaser shall have received all Permits that are necessary for it to conduct the Business as conducted by Vendor as of the Closing Date.
- (h) All Encumbrances relating to the Purchased Assets shall have been released in full, other than Permitted Encumbrances, and Vendor shall have delivered to Purchaser written evidence, in form satisfactory to Purchaser in its sole discretion, of the release of such Encumbrances.
- (i) Purchaser shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Vendor, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the "Vendor Closing Certificate").

- (j) Purchaser shall have received a certificate of the Secretary (or equivalent officer) of Vendor certifying that attached thereto are true and complete copies of all resolutions passed by the board of directors of Vendor and all resolutions of the Shareholders of Vendor authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.
- (k) Purchaser shall have received a certificate of the Secretary (or equivalent officer) of Vendor certifying the names and signatures of the officers of Vendor authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.
- (l) Vendor shall have delivered to Purchaser a certificate of status (or its equivalent) for Vendor from the Governmental Authority of the jurisdiction under the Laws in which Vendor is incorporated.
- (m) Vendor shall have delivered to Purchaser such other documents or instruments as Purchaser reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.03 Conditions to Obligations of Vendor.

The obligations of Vendor to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Vendor's waiver, at or before the Closing, of each of the following conditions:

- (a) Other than the representations and warranties of Purchaser set out in Section 5.01, Section 5.02 and Section 5.04, the representations and warranties of Purchaser set out in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and 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, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Purchaser set out in Section 5.01, Section 5.02 and Section 5.04 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.
- (b) Purchaser 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 on or before the Closing Date.
- (c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

- (d) All approvals, consents and waivers that are listed in Section 5.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Vendor at or before the Closing.
- (e) Purchaser shall have delivered to Vendor duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(b).
- (f) Vendor shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Purchaser, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) has been satisfied (the "**Purchaser Closing Certificate**").
- (g) Vendor shall have received a certificate of the Secretary (or equivalent officer) of Purchaser certifying that attached thereto are true and complete copies of all resolutions passed by the board of directors of Purchaser authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.
- (h) Vendor shall have received a certificate of the Secretary (or equivalent officer) of Purchaser certifying the names and signatures of the officers of Purchaser authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.
- (i) Purchaser shall have delivered to Vendor such other documents or instruments as Vendor reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.
- (j) Purchaser shall have delivered to Vendor a certificate of status (or its equivalent) for Purchaser from the Governmental Authority of the jurisdiction under the Laws in which Purchaser is incorporated.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival.

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 15 months from the Closing Date; *provided that* the representations and warranties in: (a) Section 4.01, Section 4.02, Section 4.08, Section 4.21 (such representations and warranties, the "**Fundamental Representations**"), Section 5.01, Section 5.02 and Section 5.04 shall survive indefinitely; (b) Section 4.17 shall survive for a period of 12 months after the Closing, and (c) Section 4.18 and Section 4.20 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. 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 before the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty

and such claims shall survive until finally resolved or the expiry of the limitation period under applicable Law, whichever is sooner.

Section 8.02 Indemnification by Vendor.

Subject to the other terms and conditions of this Article VIII, Vendor shall indemnify and defend each of Purchaser and its Affiliates and their respective Representatives (collectively, the “**Purchaser Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Purchaser Indemnitees 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 Vendor contained in this Agreement or in any certificate or instrument delivered by or on behalf of Vendor under this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Vendor under this Agreement or any certificate or instrument delivered by or on behalf of Vendor under this Agreement;
- (c) any Excluded Asset or any Excluded Liability; or
- (d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Vendor or any of its Affiliates (other than the Purchases Assets or Assumed Liabilities) conducted, existing or arising on or before the Closing Date.

Section 8.03 Indemnification by Purchaser.

Subject to the other terms and conditions of this Article VIII, Purchaser shall indemnify and defend each of Vendor and its Affiliates and their respective Representatives (collectively, the “**Vendor Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Vendor Indemnitees 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 Purchaser contained in this Agreement or in any certificate or instrument delivered by or on behalf of Purchaser under this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Purchaser under this Agreement; or
- (c) any Assumed Liability.

Section 8.04 Indemnification Procedures.

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".

- (a) **Third-Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action 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 reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of notice of such Third-Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses or as otherwise materially prejudiced by reason of such failure. Such notice by the Indemnified Party shall (i) describe the Third-Party Claim in reasonable detail, (ii) include copies of all material written evidence thereof and (iii) 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 co-operate in good faith in such defense; *provided that*, if the Indemnifying Party is Vendor, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third-Party Claim that seeks an injunction or other equitable relief against the Indemnified Party. If the Indemnifying Party assumes the defense of any Third-Party Claim, subject to Section 8.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counter-claims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right 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. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided that*, if (A) there are material legal defenses available to an Indemnified Party that are different from, or additional to, those available to the Indemnifying Party; or (B) there exists a material conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which counsel is required. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement or fails to diligently prosecute the defense of such Third-Party Claim, the Indemnified Party may, subject to Section 8.04(c), 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. Vendor and Purchaser shall co-operate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available (subject to the provisions of Section 6.02) 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, except as provided in this Section 8.04(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 at its own expense and, in that 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 under Section 8.04(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 Action 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 reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses or is otherwise materially prejudiced by reason of such failure. Such notice by the Indemnified Party shall (i) describe the Direct Claim in reasonable detail, (ii) include copies of all material written evidence thereof and (iii) 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. 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 8.05 Payments.

Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable under this Article VIII, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such 15-Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to but excluding the date such payment has been made at a rate per annum equal to prime plus 1%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

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 Effect of Investigation.

As to any knowledge of an Indemnified Party, its Affiliates or Representatives of (i) the fact that such party or any of their respective Affiliates or Representatives had knowledge of a particular misrepresentation or breach of warranty; or (ii) any investigation or examination conducted with respect to, or any knowledge acquired (or capable of being acquired) about the accuracy or inaccuracy of any representation or, warranty made by or on behalf of the parties hereto, such knowledge shall not be deemed to affect or reduce such party's reliance on such representation or warranty made by or on behalf of the parties hereto.

Section 8.08 Limitations; Exclusive Remedies.

- (a) Except in the case of fraud, criminal activity or willful misconduct or with respect to any breach of or inaccuracy in any Fundamental Representation, Vendor will have no liability to indemnify any Purchaser Indemnitee under Section 8.02(a) and (d), (i) until the aggregate amount of all Losses for which all Purchaser Indemnitees would, but for this Section 8.08(a), be entitled to indemnification under Section 8.02(a) and (d) exceeds \$20,000 (the "**Basket**"), in which event Vendor shall be required to pay or be liable for all such Losses in excess of the Basket on a dollar for dollar basis (subject to the Cap), and (ii) for any Losses to the extent Vendor would be required to make indemnification payments under Section 8.02(a) and (d) in excess of \$150,000 (the "**Cap**").
- (b) The amount of Losses recoverable by an Indemnified Party under this ARTICLE VIII with respect to an indemnity claim shall be reduced by the amount of any insurance payment or payment from any third party alleged to be responsible therefor, actually received by such Indemnified Party (or an Affiliate thereof) with respect to such indemnity claim less any cost associated with receiving such recovery or payment (including any reasonable expenses incurred by the Indemnified Party, and, in the case of insurance payments, the amount of any deductible and the present value of all increases or adjustments to insurance premiums directly arising from such insurance claim). If an Indemnified Party (or an Affiliate) receives any insurance payment or third party payment in connection with any claim for Losses for which it has already been indemnified by the Indemnifying Party, it shall pay to the Indemnifying Party, within 30 days of receiving such insurance payment, an amount equal to the excess of (i) the amount

previously received by the Indemnified Party under this ARTICLE VIII with respect to such claim plus the net amount of the insurance payments received (after deducting the costs described above), over (ii) the amount of Losses with respect to such claim which the Indemnified Party has become entitled to receive under this ARTICLE VIII. Each Indemnified Party shall use its reasonable best efforts to recover under applicable insurance policies for any Losses for which coverage is available under such policies.

- (c) Any Losses for indemnification under this Agreement shall be determined without duplication of recovery by reason of the state of facts giving rise to such Losses constituting a breach of more than one representation, warranty, covenant or agreement set forth in this Agreement.
- (d) Subject to Section 6.04 and Section 9.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or wilful misconduct 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 under 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 under the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.08(b) shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or wilful misconduct.

ARTICLE IX MISCELLANEOUS

Section 9.01 Expenses.

Except as otherwise expressly provided herein, all costs and expenses, including 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 9.02 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 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 9.02):

If to Vendor:

Facsimile:
Email: jmgibb83@gmail.com
Attention: John Gibbons

with a copy to:

Greenberg Glusker Fields
Claman & Machtinger LLP
1900 Avenue of the Stars,
Suite 2100
Los Angeles, CA 90067
USA

Facsimile: 310-201-2329
Email: agafni@greenbergglusker.com
Attention: Aaron Gafni

If to Purchaser:

51 Trolley Crescent, Unit 701
Toronto, ON M5A 0E9
Canada

Facsimile:
Email: richard@radarcon.com
Attention: Richard Adair

with a copy to:

Miller Thomson LLP
40 King Street West, Suite
5800
Toronto, ON M5H 3S1
Canada

Facsimile: 416-595-8695
Email: aapps@millerthomson.com
Attention: W. Alfred Apps

Section 9.03 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 9.04 Headings.

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

Section 9.05 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.

Section 9.06 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 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 9.07 Successors and Assigns.

This Agreement shall be binding upon and shall enure 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 9.08 No Third-Party Beneficiaries.

Except as provided in **ARTICLE VIII**, 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 9.09 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 9.10 Governing Law; Forum Selection; Choice of Language

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States applicable therein.

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.

THE LEARNING NETWORK, INC.

DocuSigned by:
Per: Terry Heiney
B7DEF0E5D78C40C...
Name: Terry Heiney
Title: President

**CRESCERE FRAMEWORKS, LLC o/a
THE LEARNING NETWORK**

Per: _____
Name: Richard Adair
Title: Operating Manager

SOLELY WITH RESPECT
TO SECTION 9.13:

Pluribus Technologies, Inc.

Per: _____
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.

THE LEARNING NETWORK, INC.

Per: _____
Name: Terry Heiney
Title: President

**CRESCERE FRAMEWORKS, LLC o/a
THE LEARNING NETWORK**

DocuSigned by:
Per: Tim Lindsay
Name: Tim Lindsay
Title: Operating Manager

SOLELY WITH RESPECT
TO SECTION 9.13:

PLURIBUS TECHNOLOGIES INC.

Per: Richard Adair
Name: Richard Adair
Title: Chief Executive Officer

Section 4.11

Intellectual Property

(a)(i)

Trademark Title	Registration Number
TRELLIS	3606799
TRELLIS	3609486
LEARNING.NET	3284989

(a)(ii)

1. Web Pages and Accounts

Web Pages and Accounts
LinkedIn: https://www.linkedin.com/company/learningnet
GitHub (Software Repositories): https://github.com/learningnet
Amazon Web Services: learningnet
GoDaddy: tldomains
dnsmadeeasy: tldns
pcirapidcomply2: 334223719884
Cox: terry@learning.net; jdegra@learning.net
Google G Suite: admin@learning.net; each employee has an account
Mailgun.com: learningnet, james@learning.net
Sentry.io (Sentry: Error Tracking Software): learningnet
Vimeo: admin@learning.net
Slack: learningnet
Uptime Robot: admin@learning.net
BitBucket: learningnet
Authorize.net: learningnet1, tlnauth0rize
Asana: authorized through Google G Suite

2. Domain Names

Domain Name
CCHSTUDYMATE.COM
LEARNING.NET
LEARNINGCENTER.COM
NONSTOPTRAINING.COM