

SHARE SALE AND PURCHASE AGREEMENT

by and among

[BUYER]

[COMPANY]

THE SHAREHOLDERS OF [COMPANY]

and

[_____]

as THE HOLDER REPRESENTATIVE

Dated as of _____, ____

This draft document is not a contract, nor does it make or accept an offer for a contract or memorialize any agreement among the Parties. No agreement, oral or written, regarding or relating to any of the matters covered by this draft has been entered into among the Parties. This document, in its present form or as it will hereafter be revised by any Party, will not become the agreement of the Parties unless and until it has been signed by duly authorized representatives of all Parties and signature pages have been exchanged. All provisions contained in this draft document remain subject to the Buyer's ongoing due diligence.

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Annexes:

Annex A – Definitions

Exhibits¹:

Exhibit A – List of Shareholders
Exhibit B – Key Employees
[Exhibit C-1 – Required Consents]²
[Exhibit C-2 – Required Contracts]

¹ Note to Draft: Additional language/exhibits regarding promised equity subject to due diligence.

² Note to Draft: Exhibits B-C subject to due diligence.

[Exhibit C-3	–	Required Notices]
[Exhibit D	–	Required Actions]
[Exhibit E	–	Form of Parachute Payments Waiver] ³
Exhibit F	–	Working Capital Principles
Exhibit G	–	Form of Restated and Amended Lease Agreement

³ Note to Draft: Subject to due diligence on applicability of IRC Section 280G.

SHARE SALE AND PURCHASE AGREEMENT ⁴

This Share Sale and Purchase Agreement (this “**Agreement**”) is made and entered into as of [●], [●], [●], [●] (the “**Agreement Date**”), by and among [Buyer], a company organized under the laws of [●] (“**Buyer**”), [Company], a private limited company organized under the laws of ~~the~~ [●], having its registered office at [●], and registered with [●] (the “**Company**”), the undersigned shareholders of the Company as listed on the attached **Exhibit A** under the heading “**Shareholders**,” and [●] as the Holder Representative⁴ (the “**Holder Representative**,” together with the Buyer, the Company and each Shareholder, a “**Party**” and collectively the “**Parties**”). Capitalized terms used but not otherwise defined below will have the meanings ascribed to such terms in **Annex A**.

WHEREAS, the Shareholders wish to sell to the Buyer, and the Buyer wishes to purchase from the Shareholders, all right, title, and interest in and to all of the issued and outstanding Shares, all upon the terms and subject to the conditions set forth in this Agreement (such transaction, the “**Share Purchase**”);

WHEREAS, prior to the consummation of the Share Purchase, the Company shall complete the Excluded Asset Sale and shall effect the Excluded Asset Cash Distribution to the Shareholders;⁵

WHEREAS, simultaneously with the execution of this Agreement and as a material inducement to the willingness of the Buyer to enter into this Agreement, each of the individuals listed in the attached **Exhibit B** (each, a “**Key Employee**”) is executing and delivering (a) an offer letter that describes, among other matters, the terms of his or her employment with a Buyer Entity after the Closing (each, a “**Key Employee Offer Letter**”)⁶ and (b) a Buyer Entity standard form of Confidentiality, Noncompetition, and Invention Assignment Agreement (each, an “**NDA**”), the effectiveness of all of such agreements being conditioned upon the Closing.

NOW, THEREFORE, in consideration of the premises, representations, warranties, and the mutual agreements and covenants set forth in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I SALE AND PURCHASE OF SHARES

1.1 Sale and Purchase of Shares

(a) Upon the terms and subject to the conditions of this Agreement, at the Closing, the Buyer agrees to purchase the Shares from the Shareholders, and each of the Shareholders agree to

⁴ Note to Draft: This Agreement remains subject to review by Shareholders’ Belgian counsel.

~~⁴ Note to Draft: Shareholders to confirm which one will act as the representative for both Shareholders for purpose of administering any claims under or other matters related to this Agreement.~~

⁵ Note to Draft: This refers to the sale of the out-of-scope subsidiaries and investments by the Company prior to the Closing following which the Company will distribute to the Shareholders the cash proceeds from such sale.

sell the Shares held by such Shareholder to the Buyer.

(b) [Each Shareholder irrevocably waives all pre-emptive rights, rights of first offer or first refusal or similar rights with respect to the transfer of the Shares hereunder, and any other rights which restrict the valid transfer of the Shares, or which otherwise may prevent the fulfillment of this Agreement, whether such restriction is conferred on the Shareholder by the Company's [articles of association] or otherwise, and each Shareholder undertakes to cause the Company to do the same.]⁶⁷

1.2 Consideration

1.2.1 Purchase Price, Adjusted Purchase Price, and Payment Terms

(a) For the purposes of this Agreement, the following terms have the following meanings:

(i) “**Purchase Price**” means 71,234,542 Euros.

(ii) “**Adjusted Purchase Price**” means (A) the Purchase Price, *plus* (B) the Working Capital Surplus (if any), *minus* (C) the Unpaid Transaction Costs, *minus* (D) the Closing Debt, and minus (E) the Working Capital Shortfall (if any) (in the case of items (B), (C), (D) and (E), each as set forth on the Final Adjustments Spreadsheet).

(b) At the Closing, the Adjusted Purchase Price will be paid or retained as follows:

(i) The Indemnification Holdback Amount will be retained by the Buyer to be paid as set forth in Section 1.3(a);

(ii) [Deferred Purchase Price/Holdback]⁷⁸;

(iii) The Buyer (or a Buyer Entity) will (A) pay on behalf of the Shareholders or the Company to each intended recipient of payments in respect of the Closing Debt or Unpaid Transaction Costs as listed in the Final Adjustments Spreadsheet and who has delivered a payoff letter or final invoice in accordance with Section 6.8(a)(v) by wire transfer of immediately available funds to the account listed for that intended recipient on the applicable payoff letter or final invoice, and (B) retain the portion of any Closing Debt or Unpaid Transaction Costs payable to those intended recipients (as listed on the Final Adjustments Spreadsheet), in respect of those intended recipients who fail to deliver a fully executed payoff letter or final invoice in accordance with Section 6.8(a)(v) prior to the Closing; and

(iv) The Buyer (or a Buyer Entity) will pay by wire transfer to each Shareholder, an amount equal to (A) such Shareholder's Pro Rata Share of the Adjusted Purchase Price

⁶⁷ Note to Draft: To be confirmed in due diligence.

⁷⁸ Note to Draft: Alternatives with respect to holdback/deferred purchase price payment structure under review by Buyer.

minus (B) such Shareholder's Pro Rata Share of the Indemnification Holdback Amount (such amount, for each Shareholder, being the "**Closing Amount**"), which Closing Amount will be set forth on the Final Closing Consideration Spreadsheet.

(c) Any obligation of the Buyer to make any payment pursuant to this Agreement may be satisfied by deposit of such amounts with the Payments Administrator (defined below). The Buyer (or a Buyer Entity) will be responsible for the fees and expenses of the Payments Administrator. The Buyer (or a Buyer Entity) will, in accordance with Section 1.7, deduct and withhold any amounts that are required to be deducted and withheld under Applicable Law.

1.3 Indemnification Holdback

(a) Notwithstanding anything to the contrary in this Agreement, as a partial mechanism to satisfy the obligations of the Shareholders set forth in Article VI, an aggregate of 10,685,181 Euros (the "**Indemnification Holdback Amount**") will not be paid to the Shareholders at the Closing, but will instead be withheld by the Buyer and thereafter paid, as applicable, to the Shareholders as set forth in this Section 1.3(a) (the aggregate amount of cash so held by the Buyer from time to time, the "**Indemnification Holdback Fund**"). Within five Business Days following the date that is 24 months after the Closing Date (the "**Release Date**"), the Buyer (or a Buyer Entity) will pay (or cause to be paid) to the Payments Administrator, for further distribution to each Shareholder, by wire transfer of immediately available funds in accordance with wire transfer instructions provided by the Holder Representative to the Payments Administrator no later than three Business Days prior to the Release Date, such Shareholder's Pro Rata Share of (i) the Indemnification Holdback Fund, *less* (ii) any amount previously paid from the Indemnification Holdback Fund in satisfaction of any indemnification claims under this Agreement plus an amount sufficient to satisfy any then pending Indemnification Claims made by any Indemnified Party. Promptly following the final resolution of, and full payment or credit in connection with, all such pending Indemnification Claims, the Buyer (or a Buyer Entity) will pay (or cause to be paid) to each Shareholder such Shareholder's Pro Rata Share of any remaining portion of the Indemnification Holdback Fund. The Indemnification Holdback Fund will not accrue interest. To the extent required by Applicable Law, a portion of any amounts released from the Indemnification Holdback Fund may be treated and reported for any and all income Tax purposes as imputed interest.

(b) The rights of the Shareholders to receive payment from the Indemnification Holdback Fund is personal to such Shareholder, and is not transferable or assignable, and any purported transfer or assignment will be void. For the avoidance of doubt, in the event of the death of a Shareholder, such Shareholder's rights to receive payment from the Indemnification Holdback Fund shall pass to such Shareholder's lawful successors or heirs in accordance with Applicable Law.

1.3.1 Consideration Spreadsheet⁸⁹

Schedule 1.3.1 to the Disclosure Memorandum (the "**Initial Closing Consideration**")

⁸⁹ Note to Draft: A form of Closing Consideration Spreadsheet/Adjustments Spreadsheet will be provided by Buyer.

Spreadsheet”) sets forth (a) the name, address, and email address (to the extent available) of each Shareholder, share numbers, and the number of Shares (by class) held by such Shareholder, (b) for each Shareholder (i) an estimate of the Closing Amount payable to such Shareholder at the Closing, (ii) such Shareholder’s Pro Rata Share, and (iii) the portion of the Indemnification Holdback Amount withheld from such Shareholder, in each case, subject to and in accordance with Section 1.6 (calculated based on the Company’s good faith estimate of Unpaid Transaction Costs, Working Capital and Closing Debt, in each case, as of the anticipated Closing Date), (c) ~~all information necessary to satisfy the cost basis reporting requirements with respect to outstanding Shares, including the cost basis and date of acquisition of such shares, (d) any estimated applicable Tax withholding to be applied to payments in respect of Shares, or any amounts released from the Indemnification Holdback Fund, or “0” if no such withholding is applicable, or other payments in this Agreement, (e)~~ a funds flow memorandum setting forth the wire payments to be made by the Buyer and the Payments Administrator at the Closing, and (f) such other information reasonably requested by the Buyer. The Company will deliver to the Buyer not less than three Business Days prior to the Closing Date a revised Initial Closing Consideration Spreadsheet (the “***Final Closing Consideration Spreadsheet***”), certified by the Chief Executive Officer of the Company, updated with the Company’s good faith estimates of such information as of the Closing Date and reasonably satisfactory to the Buyer. The Final Closing Consideration Spreadsheet will reflect any and all adjustments required on the basis of the Final Adjustments Spreadsheet; it being understood and agreed that the Final Closing Consideration Spreadsheet will be prepared on the same basis and using the same methodologies, and in accordance with the same principles, as the Initial Closing Consideration Spreadsheet, including being reasonably satisfactory to the Buyer.

1.3.2 Adjustments Spreadsheet

Schedule 1.3.2 to the Disclosure Memorandum (the “***Initial Adjustments Spreadsheet***”) sets forth the Company’s good faith estimate of (a) Unpaid Transaction Costs, (b) Working Capital and (c) Closing Debt, in each case, calculated as of the Agreement Date and calculated as of the anticipated Closing Date. The Company will deliver to the Buyer not less than three Business Days prior to the Closing Date a revised Initial Adjustments Spreadsheet (the “***Final Adjustments Spreadsheet***”), certified by the Chief Executive Officer of the Company, updated with the Company’s good faith estimates of such information as of the Closing Date and reasonably satisfactory to the Buyer; it being understood and agreed that the Final Adjustments Spreadsheet will be prepared on the same basis and using the same methodologies, and in accordance with the same principles, as the Initial Adjustments Spreadsheet, including being reasonably satisfactory to the Buyer.

1.3.3 Payment Procedures

(a) [Prior to the Closing, the Buyer will designate [Acquiom Financial LLC], or any successor thereto, to act as Payments Administrator (the “***Payments Administrator***”) for purposes of making payments to the Shareholders as may be permitted or required by this Agreement.]

(b) On or promptly after the Closing Date, the Buyer (or a Buyer Entity) will cause an amount equal to the Pro Rata Share of the Adjusted Purchase Price payable at the Closing to each of the Shareholders in accordance with the Final Closing Consideration Spreadsheet (and, for the

avoidance of doubt, excluding the portion of such Shareholder's Pro Rata Share of the Adjusted Purchase Price that constitutes the Indemnification Holdback Amount) to be deposited with the Payments Administrator for payment to each Shareholder in accordance with the Final Closing Consideration Spreadsheet.

(c) The Payments Administrator will promptly pay such amounts to the bank account of each Shareholder as set forth in the Final Closing Consideration Spreadsheet. No interest shall accrue on the Adjusted Purchase Price.

(d) The Buyer's delivery of the applicable portion of the Adjusted Purchase Price to the Payments Administrator and/or the applicable Buyer Entity in accordance with and as set forth in this Section 1.3.3 constitutes the Buyer's (and all Buyer Entities') full performance of its obligations with respect to the payment of all or any portion of the Adjusted Purchase Price to the Shareholders, as applicable, in connection with the consummation of the Transactions.

(e) Any cash made available to the Payments Administrator and not exchanged for Shares in accordance with this Section 1.3.3(e) within 12 months after the Closing shall be redelivered or repaid by the Payments Administrator to the Buyer (or a Buyer Entity). After such time, any Shareholder who has not theretofore delivered or surrendered certificates (if any) representing Shares and the other documents required to be executed and delivered by such Shareholder pursuant to this Section 1.3.3(e) to the Payments Administrator, subject to Applicable Law, shall look as a general creditor only to the Buyer for payment of such Shareholder's Pro Rata Share of the Adjusted Purchase Price. Notwithstanding anything to the contrary in this Agreement, neither the Buyer nor any other Party will be liable to a Shareholder for any amount of the Adjusted Purchase Price delivered to a public official pursuant to Applicable Law, including abandoned property, escheat, and similar Applicable Law.

1.4 Closing Deliveries

(a) At or prior to the Closing, as applicable, the Company will deliver to the Buyer all certificates, instruments, documents and other deliverables set forth in Article VI.

(b) At or prior to the Closing, as applicable, the Buyer will:

(i) make or retain the payments set forth in Section 1.2.1;

(ii) buy the full and unrestricted ownership of the Shares from the Shareholders, free and clear of any Encumbrances;

(iii) procure that an extraordinary shareholders' meeting of the Company and the Subsidiaries is held during which: (i) the resignation of the resigning directors is acknowledged, (ii) interim discharge is granted to the directors for the performance of their mandate until Closing, and (iii) new directors are appointed; and

(iv) deliver to the Company all certificates, instruments, documents and other deliverables set forth in Article VII.

(c) At or prior to the Closing, as applicable, the Shareholders will, as applicable:

(i) sell and transfer the full and unrestricted ownership of the Shares to the Buyer, free and clear of any Encumbrances, by recording the transfer of the Shares in the Company's share register or instructing any duly authorised attorney-in-fact to do so on their behalf;

(ii) deliver the updated shareholder register in hard and soft copy to the Buyer;

(iii) deliver to the Buyer an acknowledgement of receipt of the payments set forth in Section 1.2.1;

(iv) deliver to the Buyer letters of resignation from the directors and officers of the Company identified by the Buyer, whereby such directors and officers resign from their respective offices, effective as of the Closing, without any claim against the Company; and

(v) procure that any Contract by and between one or more of the Shareholders, on the one hand, and one or more of the other Shareholders or the Company, on the other hand, [including the [●]] are terminated and of no further force or effect, and all rights and claims under such Contract by any Shareholder are fully and unconditionally released; and

(vi) [confirm and acknowledge, by executing and delivering in writing a closing memorandum relating to the Closing, in form and substance reasonably satisfactory to the Buyer, with respect to the fulfilment or waiver, as the case may be, of the actions and deliveries at, and consummation of, the Closing.]

1.5 The Closing

Upon the terms and subject to the conditions of this Agreement, the closing of the Transactions (the "**Closing**") will be held by electronic exchange of documents on the 3rd Business Day after the satisfaction or waiver of the conditions set forth in Article VI and Article VII (other than such conditions that, by their terms, are intended to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) or at such other time or place as the Buyer and the Shareholders may mutually agree in writing. The date on which the Closing occurs is referred to in this Agreement as the "**Closing Date**".

1.6 Working Capital Adjustment

(a) Within ~~90~~60 days following the Closing Date, Buyer ~~may~~shall deliver to the Holder Representative a final working capital spreadsheet prepared using the Working Capital Principles (the "**Final Working Capital Spreadsheet**"). If the Holder Representative objects to any items in the Final Working Capital Spreadsheet, the Holder Representative must deliver written notice of such objection (an "**Objection Notice**") to Buyer not more than 30 days after the date the Holder Representative receives such Final Working Capital ~~Spreadsheet. The Holder Representative may not object to any items in the Final Working Capital Spreadsheet that are in~~

~~agreement with the corresponding item set forth in the Final Adjustments~~ Spreadsheet. Any Objection Notice shall specify, in reasonable detail, the nature and amount of any and all items in dispute, the amounts of any proposed adjustments, and the basis for the Holder Representative's proposed adjustments. If the Holder Representative does not deliver an Objection Notice to Buyer within such 30-day period, the Holder Representative shall be deemed to have accepted the Final Working Capital Spreadsheet. If the Holder Representative delivers an Objection Notice to Buyer within such 30-day period, Buyer and the Holder Representative shall use commercially reasonable efforts to resolve all objections relating to the Final Working Capital Spreadsheet. If Buyer and the Holder Representative do not reach a final resolution of all such objections within 30 days after delivery of all objections in accordance with this Section 1.6, Buyer and the Holder Representative shall submit all unresolved objections to an Independent Accountant, to be mutually agreed upon between Buyer and the Holder Representative, to review and make a determination solely as to the subject matter of such disagreement. The Independent Accountant shall act as an expert and not an arbitrator, shall determine only the unresolved objections so submitted by Buyer and the Holder Representative to the Independent Accountant, and shall not make an independent review of all items included in the Final Working Capital Spreadsheet. Such determination shall be (i) made using the Working Capital Principles and (ii) with respect to any specific discrepancy or disagreement, no greater than the higher amount calculated by Buyer or the Holder Representative, as the case may be, and no lower than the lower amount calculated by Buyer or the Holder Representative, as the case may be. Any documents submitted by a party to the Independent Accountant, either unilaterally or at the Independent Accountant's request, shall be simultaneously submitted to the other party. The determination of the Independent Accountant shall be set forth in writing and shall be conclusive and binding. The Final Working Capital Spreadsheet shall be revised by Buyer and the Holder Representative reflecting the numbers established in the resolution of any such objections between the parties or by the Independent Accountant in accordance with this Section 1.6(b). Buyer and its advisors shall make available to the Holder Representative and its advisors at the time the Final Working Capital Spreadsheet is delivered to the Holder Representative, and Buyer and the Holder Representative shall provide to the Independent Accountant in the event any unresolved objections to the Final Working Capital Spreadsheet are submitted to the Independent Accountant, any supporting documentation, information, and calculations reasonably requested by the Holder Representative and/or the Independent Accountant, as applicable.

(b) In the event that Buyer and the Holder Representative submit any unresolved objections with respect to the Final Working Capital Spreadsheet to the Independent Accountant for resolution as provided in Section 1.6(a), Buyer and the Holder Representative (on behalf of the Shareholders) shall each pay their own fees and expenses, except that the costs and charges of the Independent Accountant will be allocated between Buyer, on the one hand, and the Shareholders, on the other hand, based on the inverse of the percentage the Independent Accountant's determination (before such allocation) bears to the aggregate amount of the items in dispute as originally submitted to the Independent Accountant. By way of illustration and not limitation, assuming the items in dispute total an amount equal to \$1,000 and the Independent Accountant awards \$600 in favor of the Holder Representative's position, 60% of the costs and charges of the Independent Accountant would be borne by Buyer and 40% of such costs would be borne by the Shareholders.

(c) Based on the Final Working Capital Spreadsheet determined in accordance with Section 1.6(a), the parties shall recalculate the Working Capital (such recalculated amount, the “*Final Working Capital*”).

(d) Within three Business Days after such determination or agreement:

(i) in the event that the Final Working Capital exceeds the Working Capital calculated in the Final Adjustments Spreadsheet, Buyer shall deposit, or cause to be deposited, with the Payments Administrator for distribution to the Shareholders in accordance with their respective Pro Rata Shares, an aggregate amount in cash equal to the full amount that the Final Working Capital is greater than the Working Capital calculated in the Final Adjustments Spreadsheet; or

(ii) in the event that the Final Working Capital is less than the Working Capital calculated in the Final Adjustments Spreadsheet, the Shareholders shall severally but not jointly indemnify and hold harmless Buyer, without any objection by the Holder Representative, for the full amount that the Final Working Capital is less than the Working Capital calculated in the Final Adjustments Spreadsheet. Buyer, at its sole discretion, may deduct such amount from the Indemnification Holdback Fund in lieu of seeking indemnification for such amount from the Shareholders.

1.7 Tax Withholding

Notwithstanding anything to the contrary in this Agreement, the applicable Buyer Entity and the Payments Administrator shall be entitled to deduct and withhold from the Adjusted Purchase Price and any other payments contemplated by this Agreement such amounts as each such Buyer Entity or the Payments Administrator, ~~each in its sole discretion, determines are~~ is required to be deducted and withheld with respect to the making of such payment under the Code or other Applicable Law. To the extent that amounts are so deducted or withheld pursuant to this Section 1.7 and paid to the appropriate Governmental Body, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. At or prior to the Closing, and at such times thereafter as may be reasonably requested by a Buyer Entity or the Payments Administrator, the Shareholders will provide the Buyer or the Buyer Entity, as applicable, any IRS Forms W-4, W-8, or W-9 and any other certificates or forms (such as Belgian withholding tax forms), as applicable, in order to allow the applicable Buyer Entity or the Payments Administrator to meet their respective withholding and information reporting obligations under Applicable Law. ~~No Buyer Entity nor the Payments Administrator will have any obligation after the Closing to pay any amount under this Agreement to a Shareholder if such Shareholder has not provided any IRS Forms W-4, W-8, or W-9 and any other certificates or forms that such Buyer Entity or the Payments Administrator, as applicable, may request in order to satisfy withholding and information reporting obligations under Applicable Law.~~ The Parties shall cooperate to allow the Buyer Entity or the Payments Administrator, at the Buyer’s election, to effectuate such withholding by means acceptable to the Buyer, including by paying the applicable portion of any consideration for which such withholding is required to the applicable Buyer Entity or any of their respective Affiliates and causing such Person to withhold the applicable amounts through their respective payroll systems on or before the applicable Buyer

Entity's second regularly scheduled payroll occurring after such consideration becomes due and payable. Other than withholding on compensatory payments or withholding attributable to a failure to provide any IRS Forms W-4, W-8, or W-9 and any other certificates or forms (such as Belgian withholding tax forms) requested by a Buyer Entity or Payment Administrator, the applicable Buyer Entity and Payments Administrator shall use commercially reasonable efforts to promptly notify the Holder Representative of any withholding obligation and the applicable Parties shall cooperate in good faith to minimize the amount so required.

ARTICLE II

REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY⁹¹⁰

Except as disclosed in the corresponding schedules of the disclosure memorandum delivered by the Shareholders to the Buyer prior to the execution of this Agreement (the "*Disclosure Memorandum*") (each of which disclosures will be deemed to be disclosed and incorporated in each other schedule of the Disclosure Memorandum solely to the extent its applicability to such other schedule is readily apparent on its face from the actual text of the disclosures without any reference to extrinsic documentation or any independent knowledge of the reader regarding the matter disclosed, and each of which disclosures will be read together with the corresponding sections and, if applicable, the subsections, of this Article II to constitute the representations and warranties made by the Shareholders under this Article II, except that no such disclosure will be deemed to be disclosed in Schedule 2.6(b) to the Disclosure Memorandum unless expressly stated such disclosure), in order to induce the Buyer to enter into and perform this Agreement, the Shareholders jointly and severally represent and warrant to the Buyer as follows:

2.1 Organization; Books and Records

(a) The Company is a private limited company duly organized, validly existing, and in good standing under the laws of ~~the~~ [●]. Each of the Company's Subsidiaries is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. The Company and each of its Subsidiaries have all requisite power and authority to own, operate, and lease their properties and assets and to carry on their business as now conducted and as currently proposed to be conducted. The Company and each of its Subsidiaries are duly qualified to do business and are in good standing in each of the jurisdictions specified on Schedule 2.1(a) to the Disclosure Memorandum, which are the only jurisdictions in which such qualification is necessary. The Shareholders have furnished to the Buyer accurate and complete copies of the Company's and each of its Subsidiaries' (i) governing documents, (ii) minute books, and (iii) shareholder registers, stock ledgers and stock transfer records. Such books and records accurately reflect all meetings of the shareholders and the board of directors (including any committees thereof) of the Company and of each of its Subsidiaries and all actions taken by written consent of the shareholders and the board of directors (including any committees thereof) of the Company and of each of its Subsidiaries, as applicable, since inception through the Agreement Date; the minutes contained in such books and records accurately reflect the events of and actions taken at such meetings; and such stock ledger and stock transfer records accurately reflect all issuances, transfers, and

⁹¹⁰ Note to Draft: All reps & warranties in this Agreement are subject to the completion of Buyer's due diligence.

cancellations of shares of capital stock of the Company and each of its Subsidiaries.

(b) Schedule 2.1(b) of the Disclosure Memorandum sets forth a true, correct and complete list of each Subsidiary of the Company, the number and type of issued and outstanding shares of each such Subsidiary and the names of the registered owners of such shares. ~~The~~ Except as set forth on Schedule 2.1(b), the Company is, directly or indirectly, the sole beneficial owner of all of the issued share capital of each such Subsidiary, free and clear of all Encumbrances, and all such issued shares of each such Subsidiary are duly authorized, validly issued, fully paid and non-assessable and are not subject to any preemptive right or right of first refusal created by statute, the organizational or governing documents of such Subsidiary or any Contract to which such Subsidiary is a party or by which it is bound. There are no outstanding subscriptions, options, warrants, “put” or “call” rights, exchangeable or convertible securities or other Contracts of any character relating to the issued or unissued shares or other securities of each Subsidiary of the Company, or otherwise obligating the Company or any such Subsidiary to issue, transfer, sell, purchase, redeem or otherwise acquire or sell any such shares or other securities. Other than the Subsidiaries listed on Schedule 2.1(b) of the Disclosure Memorandum, the Company does not own and has never owned, directly or indirectly, any ownership, equity, partnership, membership, voting, or similar interest in, or any interest convertible into, exercisable for the purchase of or exchangeable for any such equity, partnership, membership, or similar interest, and is not under any current or prospective obligation to form or participate in, provide funds to, make any loan, capital contribution or other investment in, or assume any liability or obligation of, any Person.

(c) Schedule 2.1(b) to the Disclosure Memorandum sets forth an accurate and complete list of (i) the names of the members of the board of directors of the Company and the members of the board of directors of each of its Subsidiaries, (ii) the names of the members of each committee of each such board of directors, and (iii) the names and titles of the officers of the Company and the officers of each of its Subsidiaries.

2.2 Authority and Enforceability

(a) The Company has full power and authority to execute this Agreement and the other Operative Documents to which it is (or will be) a party and to perform its obligations in this Agreement and the other Operative Documents.

(b) This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution, and delivery by each of the other Parties hereto, this Agreement is the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, and each of the other Operative Documents to which the Company is (or will be) a party, when executed by the Company, and assuming the due authorization, execution, and delivery by each of the other parties thereto, is (or will be) the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, in each case, except to the extent such enforceability is subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or other Applicable Law affecting or relating to creditors’ rights generally and general principles of equity. No vote of the ~~Board~~board of ~~Directors~~directors or the shareholders of the Company is required for the approval of the Transactions.

2.3 Capitalization and Share Rights

(a) The authorized share capital of the Company consists of (i) [●] shares in the Company, each [●] value per share (collectively, the “**Common Shares**”) and (ii) [●] shares in the Company, each [●] value per share (together with the Common Shares, the “**Shares**”). The Shares comprise all of the issued and outstanding shares in the capital of the Company. There are no commitments outstanding of the Company to any of the Shareholders or any other Person under Contract or otherwise to issue any Shares. The Shares are held by the Shareholders as set forth on the Initial Closing Consideration Spreadsheet, free and clear of any Encumbrances. Each Share has been authorized and validly issued and is fully paid and non-assessable, and was issued in compliance with Applicable Law. There are no other outstanding shares of, or other equity or voting interests in, the Company, and no outstanding securities of the Company are convertible into or exchangeable for shares of, or other equity or voting interests in, the Company, and no outstanding options, warrants, rights, or other commitments or agreements to acquire from the Company, or that obligate the Company to issue, any shares of, or other equity or voting interests in, or any securities convertible into or exchangeable for shares of, or other equity or voting interests in the Company. There are no stock appreciation rights, phantom stock rights, or any similar rights with respect to the Company or any of its Subsidiaries. ~~Neither the Company nor any of its Subsidiaries have ever declared or paid any dividends on any shares, and there~~ There is no Liability for dividends accrued and unpaid by the Company or by any of its Subsidiaries (except with respect to the Excluded Asset Cash Distribution to be effected by the Company prior to the Closing). There are no shareholder agreements or similar agreements, including any that affect or restrict the voting rights or right to transfer the Shares of the Company or any of its Subsidiaries (including any pre-emptive rights, rights of refusal or first offer, co-sale, tag-along, or drag-along rights), and there are no investor rights or similar agreements, including any agreements providing for any registration rights, information or inspection rights, or similar rights with respect to the Company or any of its Subsidiaries or their respective securities, as applicable, and there are no agreements obligating the Company or any of its Subsidiaries to repurchase or redeem any capital of the Company or any capital of any of its Subsidiaries.

(b) ~~Neither~~ Except for the Debt reflected on Schedule 2.3(b)(1), neither the Company nor any of its Subsidiaries have any outstanding Debt, the holder of which (i) has the right to vote (or that is convertible into securities that have the right to vote) with the shareholders of the Company or such Subsidiary, as applicable, on any matter, or (ii) is or will become entitled to any payment as a result of the Transactions. Schedule 2.3(b) to the Disclosure Memorandum sets forth an accurate and complete list of all Debt, including, for each item of Debt, the Contract governing such Debt and the interest rate, maturity date, any assets securing such Debt, and any prepayment or other penalties payable in connection with the repayment of such Debt at the Closing.

(c) The Initial Adjustments Spreadsheet and the Initial Closing Consideration Spreadsheet are accurate and complete in all respects. The Final Adjustments Spreadsheet and the Final Closing Consideration Spreadsheet, when delivered, will be accurate and complete in all respects, and upon payment of the amounts set forth on the Final Closing Consideration Spreadsheet, no Buyer Entity or any of their respective Representatives will have any obligation to the Shareholders with respect to the Shares or Debt.

2.4 No Approvals; No Conflicts

~~The~~ Except as set forth in Schedule 2.4(a), the execution, delivery, and performance by the Company of this Agreement and the other Operative Documents to which the Company is (or will be) a party, a complete list of which are included on Schedule 2.4, and the consummation of the Transactions by the Company do not and will not (a) violate (with or without the giving of notice or lapse of time, or both) Applicable Law, (b) require any consent, approval, or authorization of, declaration, filing, or registration with, or notice to, any Person, (c) result in a default (with or without the giving of notice or lapse of time, or both) under, or acceleration or termination of, or the creation in any Person of the right to accelerate, terminate, modify, or cancel, any Encumbrance, Contract, obligation, or Liability to which the Company, or any of its Subsidiaries, is a party or by which the Company or any of its Subsidiaries is bound or to which any assets of the Company or any of its Subsidiaries are subject, (d) result in the creation of any Encumbrance on any assets of the Company or any of its Subsidiaries, (e) conflict with or result in a breach of or constitute a default under any provision of the organizational or governing documents of the Company or any of its Subsidiaries, (f) invalidate or adversely affect any Permit held by the Company or any of its Subsidiaries, or (g) impair the right of the Company or any of its Subsidiaries (or any Buyer Entity after the Closing) to Exploit any Company IP.

2.4.1 Intellectual Property Registrations

(a) All registrations and applications made by, on behalf of, or in the name of the Company and its Subsidiaries (or under obligation of assignment to the Company) in any jurisdiction for any patents, copyrights, mask works, trademarks, service marks, domain names, and any other Company Intellectual Property Right (collectively, “Company IP Registrations”) are set forth on Schedule 1.1.1 to the Disclosure Memorandum. All of the Company IP Registrations are valid, enforceable, and subsisting. To the Knowledge of the Company, there are no information, materials, facts, or circumstances, including any information or fact that would constitute prior art, that would render any of the Company IP Registrations invalid or unenforceable, or would materially affect any pending application for any Company IP Registrations. Except as set forth on Schedule 1.1.1 to the Disclosure Memorandum, there are no actions that must be taken by the Company, any of its Subsidiaries or the Buyer within 90 days after the Agreement Date for the purpose of obtaining, maintaining, perfecting, preserving, or renewing any Company IP Registration. All necessary registration, maintenance, and renewal fees due in connection with the Company IP Registrations have been made and all necessary documents, recordations, and certificates in connection with the Company IP Registrations have been filed with the relevant patent, copyright, trademark, or other authorities for the purposes of prosecuting, perfecting, and maintaining the Company IP Registrations. Neither the Company nor any of its Subsidiaries has misrepresented, or failed to disclose, any facts or circumstances in any application for any Company IP Registrations that would constitute Fraud, gross negligence or a misrepresentation with respect to such application, or that would otherwise affect the validity or enforceability of any Company IP Registration. Neither the Company nor any of its Subsidiaries has engaged in any action or any omission, conducted their respective businesses, or used or enforced or failed to use or enforce the Company IP, in a manner that would result in the abandonment, cancellation, or unenforceability of any Company IP Registration, and neither the Company nor any its Subsidiaries has taken (and has not failed to take) any action that would result

in the forfeiture or relinquishment of any Company IP Registration.

(b) There have been no interferences, re-examinations, or oppositions brought or, to the Knowledge of the Company, threatened to be brought involving any of the Company IP, nor, to the Knowledge of the Company, is there any basis for any such interference, re-examination, or opposition.

2.5 Financial Statements; ~~No Undisclosed Liabilities~~; Accounts Receivable

(a) Schedule 2.5(a)(i) to the Disclosure Memorandum sets forth (i) the audited consolidated balance sheets and consolidated statements of operations, cash flows, and equity of the Company and its Subsidiaries at and for the three fiscal years ended December 31, 2019, 2020, and 2021 and accompanying notes (the “*Annual Audited Financial Statements*”) and (ii) an unaudited consolidated balance sheet and consolidated statements of operations, cash flows and equity of the Company and its Subsidiaries at and for the [three]-month period ended [March 31], [●]⁺¹¹ (the “*Interim Financial Statements*” and collectively with the Annual Financial Statements, the “*Financial Statements*”). The Financial Statements (i) are accurate, complete, and consistent with the books and records of the Company and its Subsidiaries, (ii) have been prepared in conformity with GAAP on a basis consistent with prior accounting periods, and (iii) give a true and fair view of the financial position, results of operations, and changes in the consolidated financial position of the Company and its Subsidiaries as of the dates and for the periods indicated, subject, in the case of the Interim Financial Statements, solely to the type of normal recurring period end adjustments set forth on Schedule 2.5(a) to the Disclosure Memorandum. The consolidated balance sheet of the Company and its Subsidiaries as of [March 31], [●]⁺¹² (the “*Company Balance Sheet Date*”) is referred to as the “*Company Balance Sheet*” in this Agreement. ~~Neither the Company nor any of its Subsidiaries has any Liabilities that are not fully reflected or reserved against, as prescribed by GAAP, in the Company Balance Sheet, except Liabilities incurred since the Company Balance Sheet Date in the ordinary course of business and consistent with past practice, which in the aggregate do not exceed \$10,000.~~ Neither the Company nor any of its Subsidiaries has any off-balance-sheet Liability to, or any financial interest in, any third party or entities, the purpose or effect of which is to defer, postpone, reduce, or otherwise avoid or adjust the recording of debt expenses incurred by the Company or any of its Subsidiaries. All reserves that are set forth in or reflected in the Company Balance Sheet have been established in accordance with GAAP consistently applied and are adequate. Neither the Company nor any of its Subsidiaries is a guarantor, indemnitor, surety, or other obligor of any indebtedness of any other Person. The Company has delivered to the Buyer accurate and complete copies of all management letters and other correspondence received from accountants of the Company and each of its Subsidiaries during the five year period prior to the Agreement Date relating to the financial statements and accounting controls of the Company and its Subsidiaries, and all related matters. There has been no incidence of Fraud or gross negligence that involves any current or former Company Service Providers. No services have been performed for the Company or for any of its Subsidiaries by Ernst & Young, LLP.

⁺¹¹ Note to Draft: To be confirmed.

⁺¹² Note to Draft: To be confirmed.

(b) The accounts receivable of the Company and its Subsidiaries (collectively, the “**Accounts Receivable**”) as reflected on the Company Balance Sheet and as will be reflected in the Final Adjustments Spreadsheet arose in the ordinary course of business and consistent with past practice and represent *bona fide* claims against debtors for sales and other charges, and have been collected or are collectible in the book amounts thereof within 60 days following the Agreement Date, less an amount not in excess of the allowance for doubtful accounts provided for in the Company Balance Sheet or in the Final Adjustments Spreadsheet, as the case may be. Allowances for doubtful accounts and warranty returns have been prepared in accordance with GAAP consistently applied and in accordance with the Company and its Subsidiaries’ past practice and are sufficient to provide for any losses that may be sustained on realization of the applicable Accounts Receivable. The Accounts Receivable arising after the Company Balance Sheet Date and before the Closing Date (i) arose or will arise in the ordinary course of business and consistent with past practice, (ii) represented or will represent *bona fide* claims against debtors for sales and other charges, and (iii) have been collected or are collectible in the book amounts thereof within 60 days following the Agreement Date, less allowances for doubtful accounts and warranty returns determined in accordance with GAAP consistently applied and the Company and its Subsidiaries’ past practice that are or will be sufficient to provide for any losses that may be sustained on realization of the applicable Accounts Receivable. None of the Accounts Receivable is subject to any claim of offset, recoupment, set-off, or counter-claim and, to the Knowledge of the Company, there are no facts or circumstances (whether asserted or unasserted) that could give rise to any such Claim. No material amount of Accounts Receivable is contingent upon the performance by the Company or any of its Subsidiaries of any obligation or Contract other than normal warranty repair and replacement. No Person has any Encumbrance on any Accounts Receivable, and no agreement for deduction or discount has been made with respect to any such Accounts Receivable. Schedule 2.5(b) to the Disclosure Memorandum sets forth, as of the Agreement Date, an aging of the Accounts Receivable in the aggregate and by customer and indicates the amounts of allowances for doubtful accounts and warranty returns.

(c) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management’s general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with applicable GAAP and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, and (v) the obligations of the Company and each of its Subsidiaries are satisfied in a timely manner and as required under the terms of each Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries have unremedied significant deficiencies or material weaknesses (as such terms are defined under GAAP) in the design or operation of internal control over financial reporting.

(d) The Company has ~~at all times~~ timely reimbursed Company Service Providers for business expenses incurred by such Company Service Providers on behalf of the Company or any of its Subsidiaries in accordance with Company policy and prior practice. With respect to any employees terminated on or after the Agreement Date through the Closing Date, inclusive, who

elect to continue coverage benefits or similar benefits required to be provided by Applicable Law, the administrative costs to the Company associated with any such election will be *de minimis*.

2.6 Absence of Certain Changes or Events

Except for transactions specifically contemplated in this Agreement, since the Company Balance Sheet Date: (a) the businesses of the Company and each of its Subsidiaries have been conducted only in, and neither the Company nor any of its Subsidiaries have taken any action except in, the ordinary course of business and consistent with past practice, (b) there has not occurred any Material Adverse Effect, and (c) neither the Company nor any of its Subsidiaries have done, caused, or permitted any action that if taken between the Agreement Date and the earlier of the Closing and the termination of this Agreement in accordance with Article IX would require the prior written consent of the Buyer pursuant to Section 5.1.

2.7 Property¹²¹³

(a) Other than the real property owned by the Excluded Subsidiaries as described on Schedule 2.7(a) of the Disclosure Memorandum (the “***Owned Real Property***”), neither the Company nor any of its Subsidiaries owns, ~~and have not in the ten-year period prior to the Agreement Date owned~~, any real property. There is no Encumbrance applicable to the Owned Real Property that could reasonably be expected to delay, impair or prevent the consummation of the Excluded Asset Sale. The Owned Real Property is not subject to any right of pledge, charge, lien, mortgage, deposit, assignment, option right, pre-emption right, entitlement to beneficial ownership (including usufruct and similar entitlement), any provisional or executory attachment and any interest held by a third party (including pre-emption or preferential right) or any other third-party right of any kind (with the exception, with respect to the Owned Real Property, of easements and rights mentioned in the property titles of the Owned Real Property) or security interest that limits or impacts the free and unrestricted title, and/or the transfer.

(b) All of the assets and properties of the Company and its Subsidiaries are in good condition and repair subject to normal wear and tear, in sufficient working order and have been properly maintained. Schedule 2.7(b) to the Disclosure Memorandum contains an accurate and complete list of all real property leased or currently being used by the Company and each of its Subsidiaries (the “***Leased Real Property***”). The lease agreements with respect to the Real Property (the “***Leases***”) are valid, binding, and enforceable in accordance with their terms and are in full force and effect. None of the Leases were for a term of five years or more at the time they were executed (including renewal options). The Company and each of its Subsidiaries have performed all material obligations imposed on the Company or such Subsidiary, as applicable, under the Leases, and neither the Company, nor any of its Subsidiaries, nor any other party thereto is in default under the Leases, nor is there any event that with notice or lapse of time, or both, would constitute a default by the Company or any of its Subsidiaries thereunder, or, to the Knowledge of the Company, any other party thereto. There is not, and within the past 12 months there has not been, any material disagreement or dispute with any other party to any of the Leases, nor is there

¹²¹³ Note to Draft: Additional representations may be proposed following due diligence on the real estate holdings of the Company and its Subsidiaries.

any pending request for amendment of any of the Leases. Neither the Company nor any of its Subsidiaries have received any notification that any party to any of the Leases intends to cancel, terminate, materially modify, refuse to perform, or refuse to renew any of the Leases. There is no Encumbrance applicable to the Real Property that could reasonably be expected to materially impair the use or the occupancy of the Real Property other than Permitted Encumbrances. The Company has provided to the Buyer accurate and complete copies of all Leases.

(c) ~~All of the assets and properties of the Company and its Subsidiaries are in good condition and repair subject to normal wear and tear, in sufficient working order and have been properly maintained.~~ Each asset (i) included in the Financial Statements, (ii) which is a material asset acquired by the Company or any of its Subsidiaries since the Company Balance Sheet Date, (iii) that the Company or any of its Subsidiaries purports to own, or (iv) which is a material asset used by the Company or any of its Subsidiaries or that is in the reputed ownership of the Company or any of its Subsidiaries, is: (x) legally and beneficially owned solely by the Company or by one of its Subsidiaries free from all Encumbrances other than Permitted Encumbrances and (y) where capable of possession, in the possession or under the control of the Company or one of its Subsidiaries.

(d) Neither the Company nor any of its Subsidiaries are a party to, nor liable under, any lease or hire, hire purchase, credit sale, or conditional sale agreement.

(e) Schedule 2.7(e) to the Disclosure Memorandum contains an accurate and complete list of all material personal property owned by the Company and by each of its Subsidiaries (the “*Personal Property*”). The properties and assets owned, leased, or licensed by the Company and its ~~Subsidiaries~~subsidiaries include all the properties and assets used in the businesses of the Company and its Subsidiaries and are sufficient ~~for the~~to conduct ~~of such businesses~~business by the Company and its Subsidiaries as currently conducted and as currently proposed to be conducted. Other than the Owned Real Property described in Schedule 2.7(e) to the Disclosure Memorandum, the properties and assets owned, leased or licensed by the Company’s Subsidiaries that will be sold in the Excluded Asset Sale are not used in, or necessary for the conduct of, the businesses of the Company, [Company EU] or [Company USA]. The Company and each of its Subsidiaries’ interests in the Personal Property are free and clear of all Encumbrances, other than Permitted Encumbrances.

2.8 Labor and Employment Matters; Nondisclosure and Non-Competition Agreements

(a) Schedule 2.8(a) to the Disclosure Memorandum sets forth an accurate and complete list of: (i) the names, titles, national, and local jurisdictions of service to the Company or any of its Subsidiaries, work authorization status in such jurisdictions, classification for purposes of all applicable wage-and-hours laws, part- or full-time status, permanent or temporary status, leave status, accrued paid time off, and current base and variable compensation amounts or rates (whether salaried or otherwise) of all directors, officers, and employees (full-time and part-time, whether permanent or temporary) of the Company and each of its Subsidiaries, and (ii) the names, titles, national, and local jurisdictions of service to the Company or any of its Subsidiaries, permanent or temporary status, current compensation packages, and descriptions of services to the

Company or any of its Subsidiaries of all consultants and independent contractors of the Company and its Subsidiaries. If either the Company or any of its Subsidiaries is a party to any Contract with a third-party entity that employs individuals who provide services to the Company or any such Subsidiary as contractors or consultants (“**Third-Party Contractor Agreement**”), Schedule 2.8(a) to the Disclosure Memorandum also sets forth the name of the third-party entity, the date of such Third-Party Contractor Agreement, the term of such Third-Party Contractor Agreement, the names of each individual (including a description of services by such individual) who provides services to the Company or any of its Subsidiaries under such Third-Party Contractor Agreement and the jurisdictions of service to the Company or any of its Subsidiaries.

(b) Neither the Company nor any of its Subsidiaries is a party to any labor, collective bargaining, or similar agreement, and, to the Knowledge of the Company, there are currently no organizational campaigns, petitions, or other unionization activities seeking recognition or negotiating of a collective bargaining unit or agreement that could affect the Company or any such Subsidiary. No employees of the Company or any of its Subsidiaries are, or in the past three years have been, represented by any labor organization, or other collective representative entity, union, or organization. None of the Transactions could reasonably be expected to require approval or consent by any works council, labor collective group, or other similar third-party entity. There is no labor dispute, labor offense/criminal case or social security dispute pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries regardless of whether initiated by any of the employees or former employees or any trade union or other body representing an employee or any competent governmental authority (*e.g.* National Office of Social Security, Social Inspection, *etc.*), and neither the Company nor any of its Subsidiaries has experienced any work stoppage ~~since~~in the ~~inception of the Company~~past three (3) years. No investigation of the Company or any of its Subsidiaries by any competent authority is pending in respect of any non-compliance with applicable employment laws or collective bargaining agreements, social security, health and safety or environmental laws and regulations, and neither the Company nor any of its Subsidiaries have received written notice which is still outstanding from any competent authority that it intends to conduct such an investigation. To the Knowledge of the Company, no employee, contractor, or consultant of the Company or any of its Subsidiaries intends to terminate his or her employment or relationship with the Company or any of its Subsidiaries. All employees of the Company and its Subsidiaries are eligible to work, and are lawfully employed in [~~the~~ United States]¹³¹⁴, as applicable, and all employees employed in the United States are employed on an “at will” basis. ~~All~~In the past three (3) years, all individuals who have provided or are providing services of any kind to the Company or any of its Subsidiaries are correctly classified as either being an employee or an independent contractor, and if classified as an employee are correctly classified as being exempt or non-exempt from overtime under Applicable Law.

(c) ~~Since~~In the ~~inception of the Company~~past three (3) years, the Company and each of its Subsidiaries have been in compliance with Applicable Law respecting employment, including hiring, termination, cooperation, discrimination, harassment, retaliation, accommodation, terms and conditions of employment, (minimum) wages, (overtime) hours, and occupational safety and health, and has not engaged in any unfair labor practice. ~~Since~~In the

¹³¹⁴ Note to Draft: Subject to due diligence.

~~inception of the Company~~ past three (3) years, the Company and each of its Subsidiaries have complied in all material aspects with all employment agreements, all applicable collective bargaining agreements and all Applicable Laws and regulations relating to employment and social security matters. ~~Since~~ In the ~~inception of the Company~~ past three (3) years, the Company and each of its Subsidiaries have withheld all amounts required by Applicable Law, collective bargaining agreements or by Contract to be withheld from the wages, salaries, and other payments to either the Company or any of its Subsidiaries' employees, as applicable, including common law employees, and neither the Company nor any of its Subsidiaries is liable for any arrears of wages (including, but not limited to, commissions, bonuses, vacation pay or other compensation) or any (social security) Taxes or any penalty for failure to comply with any of the foregoing (or, if any arrears, penalty or interest was assessed against the Company or any of its Subsidiaries regarding the foregoing, it has been fully satisfied). Neither the Company nor any of its Subsidiaries is liable for any payment to any trust or other fund, or to any Governmental Body with respect to unemployment compensation benefits, workers' compensation benefits, social security, social benefits, or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business and consistent with past practice or under Applicable Law). There are no pending Claims against the Company or any of its Subsidiaries under any workers compensation plan, Employee Benefit Plan or policy or for long-term disability. There are no controversies pending or to the Knowledge of the Company, threatened between the Company or any of its Subsidiaries, on the one hand, and any current or former Company Service Providers, or any other Person, arising out of the Company or any of its Subsidiaries' status as employer or purported employer, or as an entity that engages contractors or consultants, on the other hand, that have resulted, or could reasonably be expected to result, in a Claim before any Governmental Body or judicial court, including Claims for compensation, wage and hour violations, severance benefits, vacation time, vacation pay or pension benefits, discrimination, harassment, retaliation, failure to accommodate, wrongful discharge, failure to inform employees or carry out cooperation proceedings, non-compliance with Applicable Laws or collective bargaining agreements, failure to pay liability components to the unemployment insurance fund or for unemployment pension (if applicable), or otherwise. ~~Since~~

(d) To the ~~inception~~ Knowledge of the Company, ~~the Company and each of its Subsidiaries have obtained from all of their respective former employees whose employment was involuntarily terminated general releases of all Claims (whether actual or potential, known or unknown) against the Company and its Subsidiaries, and all releases of employment Claims in favor of the Company and/or any of its Subsidiaries obtained from former employees since the inception of the Company are effective and binding to release all employment Claims from such employees and comply in all respects with Applicable Law.~~

~~(d)~~ No current or former Company Service Provider is or has been in violation of any provision or covenant of any Contract with any Person by virtue of such Company Service Provider's being employed by, performing services for, or serving on the board of directors of, the Company or any of its Subsidiaries. All provisions and covenants of Contracts with the Company or any of its Subsidiaries and with any other Person in respect of which the Company or any of its Subsidiaries may have rights or liability to which any current or former Company Service Provider is subject comply in all respects with Applicable Law.

(e) (i) ~~No~~In the past three (3) years, no allegations of harassment (including sexual harassment), sexual assault, or misconduct in the course of being employed by, or providing services to, the Company or any of its Subsidiaries have been made against (A) any Key Employee, or any current or former officer or director of the Company or any of its Subsidiaries, or (B) any other Company Service Provider who, directly or indirectly, supervises any other Company Service Provider and (ii) neither the Company nor any of its Subsidiaries have made any payment arising out of, or entered into any settlement agreement or conducted any investigation related to, allegations of harassment (including sexual harassment), sexual assault or misconduct by or regarding any Company Service Provider or other representative of the Company or any of its Subsidiaries. To the extent allegations of sexual harassment, sexual assault, or misconduct have been made, the Company and each of its Subsidiaries, as applicable, have promptly, thoroughly and impartially investigated all such allegations and, where it was determined that such allegation had potential merit, the Company or such Subsidiary, as applicable, has taken prompt and appropriate action.

(f) The Company has made available to the Buyer accurate and complete copies of each of the following: (i) all forms of employment agreements and offer letters pursuant to which any employees of the Company or any of its Subsidiaries currently provide services to the Company or any such Subsidiary, (ii) all forms of severance and change-in-control agreements of the Company or any of its Subsidiaries currently in effect and binding upon the Company or any of its Subsidiaries, (iii) all forms of service agreements and agreements with current consultants, contractors, and/or advisory board members of the Company or any of its Subsidiaries (including all Third-Party Contractor Agreements), (iv) all forms of Company IP Protection Agreements between current and former Company Service Providers and the Company or any of its Subsidiaries at any time ~~since its inception~~In the past three (3) years, and an accurate and complete list of any current or former Company Service Providers, and/or other Persons not subject thereto, (v) the most current management organization chart(s) of the Company and each of its Subsidiaries, (vi) all forms of bonus or variable-compensation plans of the Company and each of its Subsidiaries and all forms of award agreements under such plans, and (vii) a schedule of currently outstanding bonus, variable-compensation, severance, and change-in-control commitments of the Company and each of its Subsidiaries other than such severance payments as may be required by Applicable Law. Schedule 2.8(f) to the Disclosure Memorandum sets forth a complete and accurate list of the Company's and each Subsidiary's employment agreements, offer letters, severance or change-in-control agreements, service agreements with non-employee service providers, and bonus or compensation agreements, in each case, that are currently in effect and differing in any material respect from the standard forms of such agreements made available to the Buyer.

(g) Neither the Company nor any of its Subsidiaries have had, nor, to the Knowledge of the Company, will have, any Liabilities under any disability pension, unemployment pension or similar arrangements in relation to the Company or any Subsidiary's present and past personnel relating to a time prior to the Closing Date. The level of the pension insurance premiums will not increase in the future on the basis of disability of the past or present personnel having occurred prior to the Closing Date, or on the basis of disability of the past or present personnel after the Closing Date but being based on circumstances prior to the Closing Date.

(h) ~~The~~In the past three (3) years, the Company and each of its Subsidiaries have, in relation to their respective employees and former employees, timely and duly complied with all payment, social security contributions, withholding Tax payments and other obligations imposed on the Company and such Subsidiaries by, and the orders and awards made under, any Applicable Laws and regulations relating to employment matters, any employment agreements, any applicable collective bargaining agreements governing the relations between the Company or any of its Subsidiaries, and their respective employees, former employees or the conditions of service of their respective employees.

2.9 Employee Benefit Plans¹⁴¹⁵

(a) Schedule 2.9(a) to the Disclosure Memorandum contains an accurate and complete list of all Employee Benefit Plans and separately identifies those Employee Benefit Plans maintained for employees in the United States. Neither the Company nor any of its Subsidiaries has any agreement, commitment, or obligation to create, enter into or contribute to any other Employee Benefit Plan, or to modify or amend any existing Employee Benefit Plan (other than as contemplated under this Agreement). The terms of each Employee Benefit Plan permit the Company or its relevant Subsidiary to amend and terminate such Employee Benefit Plan at any time and for any reason without Liability (other than routine administrative costs in the ordinary course of business and consistent with past practice).

(b) The Company has made available to the Buyer a current, accurate, and complete copy of each Employee Benefit Plan (or, to the extent such plan is unwritten, an accurate description, including all material terms thereof), and, to the extent applicable: (i) any contractual obligations relating to any Employee Benefit Plan, including all trust agreements, insurance or annuity contracts, investment management agreements, record keeping agreements, and other documents or instruments related thereto, (ii) the most recent determination letter, opinion letter, or advisory letter, if applicable, (iii) any summary plan description and other written communications (or a description of any oral communications) by the Company or any of its Subsidiaries to their respective employees, as applicable, concerning the extent of the benefits provided under an Employee Benefit Plan, (iv) a summary of any proposed amendments or changes anticipated to be made to the Employee Benefit Plans at any time within the 12 months immediately following the Agreement Date, (v) for the three most recent years, as applicable (A) reviewed financial statements, (B) actuarial valuation reports, and (C) non-discrimination testing results and other compliance testing results, if applicable, and (vi) all material written correspondence relating to any audit, investigation, or correction associated with any Employee Benefit Plan. All individuals who, pursuant to the terms of any Employee Benefit Plan, are entitled to participate in any Employee Benefit Plan, are currently participating in such Employee Benefit Plan or have been offered an opportunity to do so and have declined in writing.

(c) With respect to each Employee Benefit Plan: (i) such Employee Benefit Plan is, and was, properly and legally established, and at all times has been, maintained, operated, administered, and funded in all material respects in accordance with its terms and in compliance

¹⁴¹⁵ **Note to Draft:** Subject to further revision upon receipt of due diligence with respect to employee benefit plans and arrangements.

with Applicable Law, (ii) the Company, each of its Subsidiaries, and each other Person (including each fiduciary) has, at all times, properly performed all their respective material duties and obligations (whether arising by operation of law, by contract, or otherwise) under or with respect to such Employee Benefit Plan, including all reporting, disclosure, funding and notification obligations, and (iii) all returns, reports, notices, statements, summary plan descriptions, and other disclosures relating to such Employee Benefit Plan required to be filed with any Governmental Body or distributed to any participant has been properly prepared and duly filed or distributed in a timely manner. Neither the Company nor any of its Subsidiaries have incurred, and there exists no condition or set of circumstances in connection with which the Company, any of its Subsidiaries, any Affiliate, or the Buyer could incur, directly or indirectly, any Liability (except for routine contribution and benefit payment obligations accruing after the Closing Date) under Applicable Law, Contract, or pursuant to any indemnification or similar agreement with respect to such Employee Benefit Plan.

(d) The Company and each of its Subsidiaries have complied with, and fulfilled, all of their respective obligations under all pension arrangements by which the Company and any such Subsidiary is bound, whether pursuant to collective bargaining agreements, individual agreements, or otherwise. All contributions and other payments due (both from a legal and a prudent actuarial point of view) under the pension arrangements have been fully paid, or reserved or otherwise provided for, in the Financial Statements.

(e) Neither the Company, nor any of its Subsidiaries, nor any [ERISA](#) Affiliate sponsors, maintains, or contributes to, or has ever sponsored, maintained, or contributed to (or been obligated to sponsor, maintain, or contribute to), (i) a “multiemployer plan,” as defined in Section 3(37) or Section 4001(a)(3) of ERISA, (ii) a multiple employer plan within the meaning of Section 4063 or Section 4064 of ERISA or Section 413 of the Code, (iii) an employee benefit plan that is subject to Section 302 of ERISA, Title IV of ERISA, or Section 412 of the Code, or (iv) a “multiple employer welfare arrangement,” as defined in Section 3(40) of ERISA. No Employee Benefit Plan is a defined benefit pension plan.

(f) Neither the Company, nor any of its Subsidiaries, nor any Employee Benefit Plan provides or has any obligation to provide (or contribute toward the cost of) post-employment or post-termination benefits of any kind, including death and medical benefits, with respect to any current or former Company Service Provider, other than as mandated by Applicable Law.

(g) ~~Neither~~ [Except as set forth in Schedule 2.9\(g\) to the Disclosure Memorandum,](#) ~~neither~~ the execution and delivery of this Agreement or any of the other Operative Documents nor the consummation of the Transactions (either alone or upon the occurrence of any additional or subsequent event(s)) will (i) entitle any individual to severance pay, unemployment compensation, or any other compensation or benefit, (ii) result in any benefit or right becoming established or increased, or accelerate the time of payment or vesting of any benefit, under any Employee Benefit Plan (other than as required by Applicable Law), (iii) require the Company, any of its Subsidiaries, the Buyer, or any of their respective Affiliates to transfer or set aside any assets to fund or otherwise provide for any benefits for any individual, (iv) impair any of the rights of the Company, any of its Subsidiaries or any of its Affiliates with respect to any Employee Benefit Plan, (v) result in any loss of deduction for any reason, including pursuant to Section 280G of the Code, or (vi)

result in the forgiveness in whole or in part of any outstanding loans made by the Company to any Person.

~~(h) — Neither the Company nor any of its Subsidiaries has received services from any individual (i) whom the Company or any such Subsidiary treated as an independent contractor, but who should have been treated as a common law employee of the Company or such Subsidiary, as applicable, or (ii) who constituted a leased employee of the Company or any of its Subsidiaries, as applicable, under Applicable Law. The Company and each of its Subsidiaries have qualified any self-employed relationships correctly and all obligations under those contractual relationships have been complied with by the Company and its Subsidiaries, as applicable, and such relationships have also been treated as such in practice.~~

~~(i) — The Company has timely and duly complied with the regulations on temporary agency work and labor leasing.~~

(h) ~~(j)~~ Neither the Company nor any of its Subsidiaries sponsors, maintains, or contributes to, nor has ever sponsored, maintained, or contributed to (or been obligated to sponsor, maintain, or contribute to), any Employee Benefit Plan subject to the laws of any jurisdiction other than the United States.

2.10 Intellectual Property

2.10.1 Intellectual Property Generally

(a) The Company and its Subsidiaries (i) exclusively own and have independently developed or acquired, or (ii) have the valid right or license to Exploit, all Company IP. The Company IP is sufficient for the conduct of the Company's business as currently ~~conducted and as currently proposed to be~~ conducted.

(b) The Company and its Subsidiaries own and have good and exclusive right, title, and interest in and to each item of Company-Owned IP and each of the Company IP Registrations, free and clear of all Encumbrances and licenses other than the Outbound Licenses. The right, license, and interest of the Company and its Subsidiaries in and to all Third-Party IP are free and clear of all Encumbrances (other than restrictions contained in the applicable written license agreements with such third Parties and Outbound Licenses).

(c) Other than the Company IP Agreements, there are no Contracts governing or relating to any Company IP. ~~An accurate and complete list of all Company IP Agreements, separately identified as Outbound Licenses and Inbound Licenses, is set forth on Schedule 2.10.1 to the Disclosure Memorandum, except for (i) Inbound Licenses that are standard commercial end-user license agreements for off-the-shelf, uncustomized software not in excess of an aggregate of \$10,000 and (ii) Outbound Licenses that conform in all material respects to the Company's standard form of customer agreement, a copy of which has been made available to the Buyer. The Company has provided to the Buyer accurate and complete copies of all Company IP Agreements.~~

(d) Neither the Company nor any of its Subsidiaries have, directly or indirectly, (i) transferred ownership of, or granted any exclusive license in relation to, any Company -Owned IP

to, any Person, or (ii) permitted ~~any Person to offer the Company IP or Company Products as a service or to resell, market, reproduce, distribute, or sublicense the Company IP or Company Products, or (iii) permitted the~~ the material rights of the Company or any of its Subsidiaries in any Company IP to lapse or enter the public domain.

~~2.10.2~~ **Intellectual Property Registrations**

~~(a) — All registrations and applications made by, on behalf of, or in the name of the Company and its Subsidiaries (or under obligation of assignment to the Company) in any jurisdiction for any patents, copyrights, mask works, trademarks, service marks, domain names, and any other Company Intellectual Property Right (collectively, “**Company IP Registrations**”) are set forth on Schedule 2.10.2(a) to the Disclosure Memorandum. All of the Company IP Registrations are valid, enforceable, and subsisting. There are no information, materials, facts, or circumstances, including any information or fact that would constitute prior art, that would render any of the Company IP Registrations invalid or unenforceable, or would materially affect any pending application for any Company IP Registrations. There are no actions that must be taken by the Company, any of its Subsidiaries or the Buyer within 180 days after the Agreement Date for the purpose of obtaining, maintaining, perfecting, preserving, or renewing any Company IP Registration. All necessary registration, maintenance, and renewal fees due in connection with the Company IP Registrations have been made and all necessary documents, recordations, and certificates in connection with the Company IP Registrations have been filed with the relevant patent, copyright, trademark, or other authorities for the purposes of prosecuting, perfecting, and maintaining the Company IP Registrations. Neither the Company nor any of its Subsidiaries has misrepresented, or failed to disclose, any facts or circumstances in any application for any Company IP Registrations that would constitute Fraud, gross negligence or a misrepresentation with respect to such application, or that would otherwise affect the validity or enforceability of any Company IP Registration. Neither the Company nor any of its Subsidiaries has engaged in any action or any omission, conducted their respective businesses, or used or enforced or failed to use or enforce the Company IP, in a manner that would result in the abandonment, cancellation, or unenforceability of any Company Intellectual Property Right or Company IP Registration, and neither the Company nor any of its Subsidiaries has taken (and has not failed to take) any action that would result in the forfeiture or relinquishment of any Company Intellectual Property Right or Company IP Registration.~~

~~(b) — Schedule 2.10.2(b) to the Disclosure Memorandum sets forth all trademarks, trade names, service marks, logos, domain names, design rights, and other identifiers currently used or proposed to be used by the Company and its Subsidiaries but for which no registration has been sought, as well as any other material, unregistered Company IP. There have been no interferences, re-examinations, or oppositions brought or, to the Knowledge of the Company, threatened to be brought involving any of the Company IP, nor, to the Knowledge of the Company, is there any basis for any such interference, re-examination, or opposition.~~

2.10.2 ~~2.10.3~~ **Payments**

Except as set forth in the Inbound Licenses, no royalties, commissions, fees, or other payments are or will become payable by the Company or any of its Subsidiaries to any Person by

reason of the Exploitation of any Company IP in the conduct of the Company's business as currently conducted and as currently proposed to be conducted.

2.10.3 ~~2.10.4~~ No Infringement

(a) The operation of the businesses of the Company and each of its Subsidiaries as currently conducted ~~and as currently proposed to be conducted~~, including the Exploitation of the Company IP and Company Products, (i) has not, and does not, ~~and will not conflict with~~, infringe, violate, interfere with, or misappropriate any right (including any proprietary or intellectual property right), title, or interest of any Person, and (ii) has not, and does ~~not, and will~~ not constitute unfair competition or unfair trade practices under Applicable Law. There is no pending or threatened Claim that any Company-Owned IP is invalid or contesting the ownership or right of the Company or any of its Subsidiaries to Exploit any of the Company-Owned IP, nor, to the Knowledge of the Company, is there any basis for any such Claim. To the Knowledge of the Company, there is no pending or threatened Claim that any of the Third-Party IP is invalid or contesting the ownership of the Third-Party IP or the right of the Company or any of its Subsidiaries to Exploit any of the Third-Party IP, nor is there any basis for any such Claim. Neither the Company, nor any of its Subsidiaries ~~nor any Shareholder~~ has received any notice or Claim (whether written or oral) regarding ~~any offer to license or~~ any infringement, misappropriation, violation, misuse, abuse, or other interference of or with any third-party proprietary or intellectual property right by the Company, any of its Subsidiaries, the Company IP, or any Company Products, or claiming that any other Person has any such Claim with respect thereto, nor, to the Knowledge of the Company, is there any basis for any such Claim. ~~Neither the Company, any of its Subsidiaries nor any Shareholder has received any opinion of counsel relating to infringement, invalidity, or unenforceability~~

(b) Except as set forth in Schedule 2.1.4(b), to the Knowledge of ~~any~~the Company IP ~~or any Company Products~~.

~~(b)~~ There~~there~~ is and has been no unauthorized use, unauthorized disclosure, infringement, violation, or misappropriation of any Company-Owned IP by any Person. Neither the Company, nor any of its Subsidiaries nor any Shareholder has received any notice (whether written or oral) that any Person is infringing, violating, or misappropriating any Company IP or otherwise making any unauthorized use or disclosure of any Company IP. To the Knowledge of the Company, no such infringement, violation, misappropriation, use, or disclosure is occurring or has occurred.

(c) All Technology ~~incorporated into or embodied in any~~constituting Company-Owned IP ~~or Company Products~~ was developed solely by either (i) employees of either the Company or one of its Subsidiaries, as applicable, acting within the scope of their employment or (ii) by contractors, consultants, or other third parties who have validly and irrevocably assigned all of their rights, including all intellectual property rights and proprietary rights therein, to the Company or its Subsidiaries. To the extent any such Technology relates to Company IP Registrations, to the ~~maximum~~ extent ~~provided for~~required by, and in accordance with, Applicable Law, the Company and each of its Subsidiaries have recorded each such assignment with the relevant Governmental Body.

2.10.4 ~~2.10.5~~ Confidentiality; Source Code

The Company and each of its Subsidiaries (a) have taken ~~all~~ necessary and appropriate steps to maintain the confidentiality of their respective confidential and proprietary information and data, (b) have not disclosed material confidential or proprietary information and data to any Person other than ~~a Company Service Provider and~~ under a written nondisclosure agreement, and (c) have not deposited, disclosed, or delivered to any Person, or agreed to or permitted the deposit, disclosure, or delivery to any Person of, any Source Code. No event has occurred, and no circumstances or conditions exist, that (with or without notice, lapse of time or both) will, or could reasonably be expected to, result in the disclosure or delivery to any Person of any Source Code. No Person has, or will have any right to lease, license, purchase, or otherwise obtain any Source Code or Technology incorporated into or embodied in any Company-Owned IP or Company Products.

2.10.5 ~~2.10.6~~ Agreements with Employees and Contractors

Each current or former Company Service Provider and any other Person who has been involved in, or who contributed to, the creation or development of any Company-Owned IP, has executed and delivered to the Company or one of its Subsidiaries, as applicable, a valid and enforceable (a) assignment of all rights, title, and interests that such Person may have, may have had or may hereafter acquire in or to such Company-Owned IP and a valid and enforceable waiver of any and all rights (including, including to the extent possible, any moral rights) that such Person may have therein, and (b) nondisclosure, invention, non-competition, non-solicitation, and non-hire agreement (clauses (a) and (b) collectively, the “*Company IP Protection Agreements*”), and the Company has provided accurate and complete copies of all executed Company IP Protection Agreements to the Buyer. Each Company IP Protection Agreement is on the Company’s standard form, which has been provided to the Buyer, except as set forth in Schedule ~~2.10.6~~2.10.5 to the Disclosure Memorandum. ~~No~~To the Knowledge of the Company, no current or former Company Service Provider (x) has any right, license, Claim, moral right, or interest whatsoever in or with respect to any of the Company-Owned IP, (y) is in violation of any provision or covenant of any Contract with any Person by virtue of such Company Service Provider’s being employed by, performing services for, or serving on the board of directors of, the Company, or (z) has excluded any intellectual property or other proprietary right that is related to Company IP from the assignment provisions of any Company IP Protection Agreement.

2.10.6 ~~2.10.7~~ Open Source

Schedule ~~2.10.7~~2.10.6 to the Disclosure Memorandum lists all Open Source Materials (including release number, if any) included in or integrated with (including as a programming dependency) the Company ~~Technology~~Products, including in the development or testing thereof, and (a) the Open Source License (including version number, if any) pursuant to which the Company or any of its Subsidiaries uses such Open Source Materials, (b) ~~the location on the Internet, if any, where~~whether such Open Source Materials ~~were most recently accessed by the Company or any of its Subsidiaries,~~ (c) ~~whether such Open Source Materials~~ have been modified by or for the Company or any of its Subsidiaries (including a description of such modifications, if any), (~~d~~c) whether such Open Source Materials have been distributed by or for the Company or

any of its Subsidiaries, and (ed) whether such Open Source Materials are Copyleft Materials, and if so how such Copyleft Materials are integrated with or interact with the Company IP. Neither the Company nor any of its Subsidiaries has: ~~(i) used any Open Source Materials to develop any Company IP, (ii) incorporated any Open Source Materials into, or combined any Open Source Materials with, any Company IP, or (iii) distributed any Open Source Materials in conjunction with or for use with any Company Technology. Neither the Company nor any of its Subsidiaries has~~ used any Copyleft Materials in a manner that requires (including through a condition on Exploitation of such Copyleft Materials) any Company-Owned IP (other than the Copyleft Materials themselves incorporated therein), or any portion thereof, to be subject to any Copyleft License. The Company and each of its Subsidiaries are in compliance with the terms of all relevant licenses (including all requirements related to notices and making source code available to third parties) for all Open Source Materials used by the Company or any such Subsidiary, including all copyright notice and attribution requirements, and all requirements to provide or offer access to source code. ~~The Company has provided to Synopsys, Inc. for its review a complete and accurate copy of the most recent version of all Software that is part of any Company Product.~~

2.10.7 ~~2.10.8~~ Warranty against Defects

The Company ~~IP is~~Products are free from material defects and bugs, and substantially ~~conforms~~conform to the applicable specifications, documentation, and samples therefor. The Software included in the Company ~~IP~~Products does not and will not, to the Knowledge of the Company, contain (a) any clock, timer, counter, or other limiting or disabling code, design, routine, or any viruses, Trojan horses, or other disabling or disruptive codes or commands that would cause such Software to be erased, made inoperable, or otherwise rendered incapable of performing in accordance with its performance specifications and descriptions or otherwise limit or restrict the Company's, any of its Subsidiaries' or any Person's ability to use such Software or the Company IP, including after a specific or random number of years or copies, or (b) any back doors or other undocumented access mechanism allowing unauthorized access to, and viewing, manipulation, modification, or other changes to, such Software or Company IP.

2.10.8 ~~2.10.9~~ Effect of Transaction on Company IP Agreements

(a) ~~The~~Except as set forth in Schedule 2.1.9(a) the consummation of the Transactions will neither violate nor result in the breach, modification, cancellation, termination, or suspension of, or acceleration of any payments with respect to, any Company IP Agreement. Following the Closing, the Company and each of its Subsidiaries will have the right to exercise all of their respective rights under all Company IP Agreements, to the same extent the Company and such Subsidiaries would have been able to had the Transactions not occurred and without being required to pay any additional amounts or consideration other than fees, royalties, or payments that the Company or any of its Subsidiaries would otherwise be required to pay had the Transactions not occurred.¹⁶

(b) Neither this Agreement nor the Transactions will result in (i) any third party being granted rights or access to, or the placement in or release from escrow of, Source Code, (ii) the

¹⁶ Note to Draft: Relevant required consents to be scheduled.

granting by the Buyer or any of its Affiliates to any third party any Company Intellectual Property Right or any other proprietary right, (iii) the Buyer or any of its Affiliates being bound by, or subject to, any non-competition, non-assertion of its rights, most-favored nation provisions, or other restriction on the operation or scope of its business, or (iv) the Buyer or any of its Affiliates being obligated to pay any royalties or other amounts to any third party in excess of those payable by the Company or any of its Subsidiaries prior to the Closing. Following the Closing, all Company-Owned IP will be fully transferable, alienable, or licensable by the Buyer without restriction and without payment of any kind to any third party.

2.10.9 ~~2.10.10~~ Privacy and Security

(a) The Company and each of its Subsidiaries complies with, ~~and has at all times complied with,~~ (i) Applicable Law relating to the rights of any Person with respect to Personal Information, including the Processing of Personal Information and all applicable industry standards related to the same (collectively, “**Privacy Law**”), (ii) any privacy choices, including opt-in or opt-out preferences and rights’ requests, of natural Persons relating to Personal Information along with any obligations contained in the Company’s or such Subsidiary’s internal and external data privacy and security policies with respect to the Processing of Personal Information (together, “**Company Privacy Commitments**”), and (iii) any contractual commitment made by the Company or any such Subsidiary that is applicable to such Personal Information (each, a “**Company Data Agreement**”). “**Processing**” (and the correlative meanings of “**Process**” and “**Processes**”) means the receipt, collection, sharing, selling, disclosing, transferring, renting, retrieval, consultation, analysis, combination, accessing, storage, use, security, transfer, restriction, destruction, or other processing or operations or set of operations, whether or not by automated means. The Company and each of its Subsidiaries have provided adequate notice and obtained consents necessary for the Processing of Personal Information to the extent required under Privacy Law. Neither the execution, delivery, and performance of this Agreement nor the consummation of the Transactions will cause, constitute, or result in a breach or violation of any Privacy Law, Company Privacy Commitments, Company Data Agreements or standard terms of service entered into by users of any Company Products. Copies of all current and prior privacy policies used by the Company or any of its Subsidiaries have been made available to the Buyer and such copies are accurate and complete.

(b) Each Contract between the Company, any of its Subsidiaries and any Person that Processes Personal Information for or on behalf of the Company or any of its Subsidiaries (a “**Third-Party Processor**”) complies with Privacy Law, Company Privacy Commitments, and Company Data Agreements. Without limiting the generality of the foregoing, the Company and each of its Subsidiaries have contractually obligated each Third-Party Processor to (i) take appropriate steps to protect and secure from unauthorized disclosure such Personal Information, (ii) restrict use of such Personal Information to those authorized to use such Personal Information or who require the use of such Personal Information in order to perform the applicable services for the Company or any of its Subsidiaries, (iii) prohibit such Third-Party Processor from further transferring the Company’s or any of its Subsidiaries’ data without the prior written consent of the Company or such Subsidiary, as applicable, and (iv) afford to the Company, its Subsidiaries, or any of the Company or its Subsidiaries’ representatives, as applicable, reasonable access to the places of business and systems of such Third-Party Processor to audit compliance with such

contractual obligations, and in each case, to the Knowledge of the Company, no such Third-Party Processor is in breach of any of its contractual requirements with the Company or any of its Subsidiaries.

(c) The Company and each of its Subsidiaries have implemented and maintain reasonable written security procedures and practices appropriate to protect Personal Information and employs a system of written internal controls sufficient to provide reasonable assurance that the Company and each of its Subsidiaries complies in all respects with all Privacy Law, Company Privacy Commitments, and Company Data Agreements. No Claims have been asserted or threatened in writing with respect to the Company's Processing of Personal Information.

(d) The conduct and operation of the respective businesses of the Company and its Subsidiaries, including the operation of Company Products and their distribution to and use by any natural Persons, complies with the applicable provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). The conduct and operation of the respective businesses of the Company and its Subsidiaries complies with the applicable provisions of the California Consumer Privacy Act of 2018, as amended. Neither the Company nor any of its Subsidiaries has sold, rented, released, disclosed, disseminated, made available, transferred, or otherwise communicated orally, in writing, or by electronic or other means, any Personal Information to another business or a third party for monetary or other valuable consideration. The Company and each of its Subsidiaries are in compliance with all Applicable Laws with respect to the Processing of Personal Information from a natural Person who is considered a child under Applicable Law (a "**Child**"). With respect to any data Processed by the Company or any of its Subsidiaries from a Child that (i) identifies a Child or (ii) can be used in combination with other information in the Company or any of its Subsidiaries' possession or reasonably available to the Company or any of its Subsidiaries to identify a Child, the Company and its Subsidiaries have either obtained appropriate verifiable parental consent for the Processing of such data, or has deleted such data, in each case in compliance with Applicable Law. The Company and each of its Subsidiaries has complied with requests from parents or guardians of each Child with respect to the Processing of Personal Information provided by such Child to the Company or any such Subsidiary.

(e) The Company and each of its Subsidiaries have implemented and maintained appropriate technical, physical, and organizational measures, security systems, and technologies in compliance with all data security requirements under Privacy Law and Company Privacy Commitments and that are designed to protect computers, networks, software, and systems used by the Company or any such Subsidiary from loss, theft, unauthorized access, use, disclosure, or modification. No breach, security incident, or violation of any data security policy in relation to any information or data Processed by or on behalf of the Company or any of its Subsidiaries has occurred or is threatened, and there has been no unauthorized or illegal Processing of any such information or data. The Company has provided the Buyer with accurate and complete copies of all prior reports, studies, and other analyses, whether conducted by third parties, the Company or by any of its Subsidiaries, of the measures the Company and each of its Subsidiaries take or have taken to protect computers, networks, Software, and systems used by the Company or any such

Subsidiary. None of such reports, studies and other analyses has revealed any failure of such security and other measures to be consistent with customary industry practices, the Company or any of its Subsidiaries' respective obligations to third parties, or Applicable Law. No circumstance has arisen in which: (i) Privacy Law would require the Company or any of its Subsidiaries to notify a Governmental Body or Person of a data security breach or security incident or (ii) applicable guidance or codes of practice promulgated under Privacy Law would recommend the Company or any of its Subsidiaries to notify a Governmental Body or Person of a data security breach or security incident. The Company and each of its Subsidiaries have ensured that all Third-Party Processors are under written obligations of confidentiality with respect to such data.

(f) Neither the Company nor any of its Subsidiaries has received, and there is no circumstance that would reasonably be expected to give rise to, any Claim, notice, communication, warrant, regulatory opinion, audit result, or allegation from a Governmental Body or any other Person: (i) alleging or confirming non-compliance with a relevant requirement of Privacy Law or Company Privacy Commitments, (ii) requiring or requesting the Company or any of its Subsidiaries to amend, rectify, cease Processing, de-combine, permanently anonymize, block, or delete any Personal Information, (iii) permitting or mandating relevant Governmental Bodies to investigate, requisition information from, or enter the premises of, the Company or any of its Subsidiaries, or (iv) claiming compensation from the Company or any of its Subsidiaries with respect to the Processing of Personal Information. Neither the Company nor any of its Subsidiaries has been involved in any Claims involving a breach or alleged breach of Privacy Law or Company Privacy Commitments.

2.10.10 ~~2.10.11~~ Government Rights

No ~~government or third party~~ funding, facilities or equipment of a university, college, or other educational institution or research center was used in the development of any Company-Owned IP. ~~At~~To the Knowledge of the Company, at no time during the conception of or reduction to practice of any of the Company-Owned IP was the Company or any of its Subsidiaries or any developer, inventor, or other contributor to such Company-Owned IP (i) operating under any grants from any Governmental Body, agency, university, college, or other educational institution or research center, (ii) performing research sponsored by any Governmental Body, agency, university, college, or other educational institution or research center, or (iii) subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third party that could adversely affect the Company or any of its Subsidiaries' rights in, as applicable, or give any such third-party rights in or to, such Company-Owned IP, other than rights to use the Company-Owned IP for the sole benefit of the Company or any of its Subsidiaries. ~~No~~To the Knowledge of the Company, no current or former Company Service Provider, who was involved in, or who contributed to, the creation or development of any Company-Owned IP, has performed services for any government, university, college, or other educational institution or research center during a period of time during which such Company Service Provider was also performing services for the Company or any of its Subsidiaries.

2.10.11 ~~2.10.12~~ Participation in Standard Organizations

Neither the Company nor any of its Subsidiaries has ever been a member of, a contributor

to, or affiliated with, any industry standards or open source organization body, working group, project, or similar organization (a “**Standards Organization**”), and neither the Company, any of its Subsidiaries nor any Company-Owned IP, is subject to any licensing, assignment, contribution, disclosure, or other requirements or restrictions of any Standards Organization. The Company has provided the Buyer with accurate and complete copies of all governing documents and other Contracts (including charter, bylaws, and participation guidelines) relating to the Company or any of its Subsidiaries’ respective memberships in, contributions to, or affiliations with, any Standards Organization.

2.10.12 ~~2.10.13~~ **Warranties; Company Products**

No Company Product or service related thereto is subject to any guaranty, warranty, right of return, right of credit, or other indemnity other than the applicable standard terms and conditions of sale, license, or lease of the Company or any of its Subsidiaries¹, which are set forth in Schedule ~~2.10.13~~2.10.12 to the Disclosure Memorandum. Schedule ~~2.10.13~~2.10.12 to the Disclosure Memorandum sets forth the aggregate expenses incurred by the Company and each of its Subsidiaries in fulfilling its obligations under such provisions during each of the fiscal years and the interim period covered by the Financial Statements, and, to the Knowledge of the Company, there exists no fact, circumstance, or condition that would reasonably be expected to result in such expenses significantly increasing as a percentage of sales in the future¹⁷. There have been no product liability Claims asserted against the Company or any of its Subsidiaries relating to the Company, any of its Subsidiaries, or any Company Products or services related thereto, or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries relating to any Company Products. The Company and each of its Subsidiaries has obtained, complied with, and has maintained at all times all certifications in connection with the conduct and operation of the respective businesses of the Company and such Subsidiaries, as applicable, including the operation of Company Products and their manufacture, sale, and distribution, and has provided the Buyer with accurate and complete copies of all documents relating to such certifications.

2.10.13 ~~2.10.14~~ **Information Technology**

(a) The arrangements relating to the Company and each of its Subsidiaries’ respective information and communications technology infrastructure and systems (including software, hardware, firmware, networks, and the Company’s websites) that are or have been used in the conduct of the Company’s and each of its Subsidiaries’ respective businesses (collectively, the “**ICT Infrastructure**”) will not be adversely affected by the Transactions, and the ICT Infrastructure will continue to be available for use by the Company and each of its Subsidiaries (other than those Subsidiaries that are sold in the Excluded Asset Sale) immediately following the consummation of the Transactions and thereafter on substantially the same terms and conditions as prevailed immediately before the Closing, without further action or payment by the Buyer, the Company or any of its Subsidiaries.¹⁸ The ICT Infrastructure is to the extent controlled by Company or its Subsidiaries; (i) in good working order and to the Knowledge of the Company, functions in accordance with all applicable documentation and specifications, (ii) maintained and

¹⁸ NTD: Relevant required consents to be scheduled.

supported in accordance with industry practice and is covered by sufficient maintenance and warranty provisions to remedy, or provide compensation for, any material defect, and (iii) protected by security and disaster recovery arrangements, including taking and storing back-up copies ~~(both on and off site)~~ of the software and any data in the ICT Infrastructure and following procedures for preventing the introduction of viruses to, and unauthorized access of, the ICT Infrastructure.

(b) Neither the Company nor any of its Subsidiaries has experienced, and to the Knowledge of the Company no circumstances exist that are likely or expected to give rise to, any disruption in or to the operation of the Company's and each of its Subsidiaries' respective businesses as a result of (i) any material substandard performance or defect in any part of the ICT Infrastructure whether caused by any viruses, bugs, worms, software bombs, lack of capacity, or otherwise, or (ii) to the Knowledge of the Company, a breach of security in relation to any part of the ICT Infrastructure.

2.11 Contracts

(a) Schedule 2.11(a) to the Disclosure Memorandum contains an accurate and complete list of the following Contracts to which the Company and any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound as of the Agreement Date (each a "**Material Contract**"): ⁴⁵¹⁹

- (i) each Contract with a Customer or Third-Party Vendor;
- (ii) each Contract providing for potential payments by the Company or any of its Subsidiaries in excess of ~~\$50,000~~€100,000 per annum;
- (iii) each Contract providing for potential payments to the Company or any of its Subsidiaries in excess of ~~\$50,000~~€100,000 per annum;
- (iv) any Contract requiring the Company or any of its Subsidiaries to manufacture, supply, and/or maintain in inventory any minimum number of Company Products in annual amount in excess of ~~\$50,000~~€100,000;
- (v) any Contract requiring the Company or any of its Subsidiaries to accept future purchase orders, work orders, invoices, or other requests for the supply of Company Products;
- (vi) each Contract relating to any security of the Company or any of its Subsidiaries, or their respective Debt;
- (vii) each Company IP Agreement required to be listed under Schedule 2.10.1 to the Disclosure Memorandum;
- (viii) each Contract with a term of greater than one year that cannot be canceled

⁴⁵¹⁹ Note to Draft: All Material Contract dollar thresholds are subject to due diligence.

by the Company or any of its Subsidiaries with no more than 60 days' notice without Liability;

(ix) each Contract with a right of first offer or notice, right of first refusal, non-competition, non-solicitation, non-hire, "most favored nations" pricing or exclusivity provision, licensing obligation, covenant not to assert/sue, or other provision that would (or would purport to) prevent, restrict, modify, or limit in any way the Company or any of its Subsidiaries or, following the Closing, the Buyer or any of its Affiliates, from carrying on their respective businesses in any manner or in any geographic location;

(x) each Contract that is a pricing protection plan or that would (or would purport to) restrict or impose conditions on third-party pricing;

(xi) each Contract relating to or establishing a joint venture, partnership, or limited liability company or that involves a sharing of profits or revenue with any other Person, or that provides for the payment of referral fees or bounties;

(xii) each Contract with any Governmental Body;

(xiii) each Contract pursuant to which the Company or any of its Subsidiaries (A) agree to provide indemnification that may result in Liability in excess of ~~\$50,000~~€100,000, (B) agree to indemnify any Person against any charge of infringement, misappropriation, violation, misuse, abuse, or other interference by the Company IP or by the use of the Company IP of or with any other intellectual property or proprietary right, (C) grant any Person the right to bring or control any infringement, invalidation, or other action with respect to, or otherwise to enforce any right in, any Company IP, or (D) granted or are required to grant to any Person any license, covenant not to assert/sue, or other interest or immunity from suit under any Company IP;

(xiv) each Contract granting a power of attorney, agency, or similar authority to another Person;

(xv) each Contract for the acquisition by the Company or any of its Subsidiaries of any business or any corporation, partnership, joint venture, limited liability company, association, or other business organization or division thereof (including any such Contracts under which the Company or any of its Subsidiaries has ongoing indemnification obligations);

(xvi) each Contract for the disposition of any significant portion of the assets or business of the Company or any of its Subsidiaries;

(xvii) each Contract pursuant to which the Company or any of its Subsidiaries have any obligation to sell, deliver, or provide any products, services, or Company IP to any Person, other than any Outbound License;

(xviii) each Related Party Contract;

- (xix) each collective bargaining agreement or other similar agreement;
- (xx) each Third-Party Contractor Agreement;
- (xxi) each separation agreement or severance agreement with any current or former Company Service Provider pursuant to which the Company or any of its Subsidiaries has any actual or potential Liability;
- (xxii) each Employee Benefit Plan;
- (xxiii) each confidentiality, secrecy, or non-disclosure Contract, other than any Company IP Protection Agreements (copies of which have been provided to the Buyer in accordance with Section ~~2.10.6~~2.10.5);
- (xxiv) each settlement agreement pursuant to which the Company or any of its Subsidiaries have any ongoing obligations, other than customary non-disclosure or confidentiality covenants;
- (xxv) each Contract pursuant to which the Company or any of its Subsidiaries are a lessor or lessee of any machinery, equipment, or motor vehicles involving expenditures in excess of ~~\$50,000~~€100,000 per annum;
- (xxvi) each sales promotion, market research, marketing, or advertising Contract involving expenditures in excess of ~~\$50,000~~€100,000 per annum;
- (xxvii) each Contract relating to interest rate, currency, or commodity derivatives or hedging transactions;
- (xxviii) each Contract that involves the payment of royalties to any other Person;
- (xxix) any Contract to license or authorize any third party to manufacture or reproduce any of the Company Products or Company IP;
- (xxx) any Contract involving joint development agreements, collaboration agreements, strategic partnerships, employee leasing, or secondments; and
- (xxxi) all other Contracts that are material to the Company, any of its Subsidiaries or their respective businesses.

(b) All Contracts to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound are valid, binding, and enforceable in accordance with their terms and are in full force and effect. The Company and each of its Subsidiaries has performed all obligations imposed on the Company or any such Subsidiary, as applicable, under such Contracts, and neither the Company, nor any of its Subsidiaries nor any other party thereto is in default under such Contracts, nor is there any event that with notice or lapse of time, or both, would constitute a default by the Company, any of its Subsidiaries or, to the Knowledge of the

Company, any other party under such Contracts. There is not, and ~~since~~for the ~~inception of the Company~~last ten years there has not been, any material disagreement or dispute with any other party to any Material Contract, nor is there any pending request for amendment of any Material Contract. ~~Neither~~To the Knowledge of the Company, neither the Company, nor any of its Subsidiaries nor any Shareholder has received any notification that any party to a Material Contract intends to cancel, terminate, materially modify, refuse to perform, or refuse to renew such Contract (if such Contract is renewable). The Company has provided to the Buyer accurate and complete copies of all Material Contracts at least three Business Days prior to the Agreement Date.

2.12 Claims, Legal Proceedings, and Orders

(a) There are no, ~~and since the inception of the Company there have been no~~, Claims pending or involving or, to the Knowledge of the Company, threatened against the Company, any of its Subsidiaries, or any Company Service Provider, Affiliate of the Company, or representative thereof related, directly or indirectly, to the Company or any of its Subsidiaries, and, to the Knowledge of the Company, there is not any reasonable basis for any such Claim. No Legal Proceeding is pending or, to the Knowledge of the Company, threatened by or against the Company, any of its Subsidiaries or any Person for whose, and referable to whose, acts or defaults the Company or any of its Subsidiaries may be vicariously liable. No portion of the Company or any of its Subsidiaries' respective businesses are currently operating under or subject to any Order. No petition under the U.S. federal bankruptcy or other similar Applicable Law or any state or non-US insolvency or other similar Applicable Law has been filed by or against the Company or any of its Subsidiaries.

(b) ~~(i) No current or former Company Service Provider, in each case during the course of or arising out of such Person's employment or service with the Company or any of its Subsidiaries, have been the subject of a criminal proceeding or has been found by any Governmental Body to have violated any Applicable Law (excluding minor traffic violations), (ii)~~ to the Knowledge of the Company, no petition under bankruptcy or other similar Applicable Law or any state or non-US insolvency or other similar Applicable Law has been filed by or against, or a receiver or similar officer appointed for, any director or officer of the Company or any of its Subsidiaries, and ~~(iii)~~(i) to the Knowledge of the Company, no current Company Service Provider is the subject of any Order, or has entered into any agreement with any Governmental Body, permanently or temporarily enjoining him or her, or otherwise limiting him or her, from engaging in any business, profession, or business practice.

2.13 Company Permits; Compliance with Laws

(a) The Company and each of its Subsidiaries has received all approvals, authorizations, consents, licenses, orders, registrations, and permits of all Governmental Bodies necessary for the conduct of the Company and any such Subsidiary's respective businesses (collectively, "**Company Permits**"). The Company and each of its Subsidiaries is, and ~~at all times~~for the past five years has been, in compliance with all Company Permits and in compliance with all Applicable Law.

(b) Schedule 2.13(b) to the Disclosure Memorandum contains details of all written

correspondence (other than ordinary course administrative filings) of the Company and each of its Subsidiaries with any Governmental Body over the five years prior to the Agreement Date in any jurisdiction. Neither the Company nor any of its Subsidiaries has been subject to any investigation or review by any Governmental Body.

(c) The Company and its Subsidiaries are, and ~~at all times~~ for the past five years have been, in compliance with Applicable Law of the United States, the United Nations Security Council, Her Majesty's Treasury in the United Kingdom, the European Union and individual EU member states, and other jurisdictions in which the Company and any such Subsidiaries operate or to which the Company and any such Subsidiaries are subject with respect to import and export control and economic sanctions, including the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, the U.S. Department of the Treasury Office of Foreign Asset Control ("**OFAC**") economic sanctions regulations as well as executive orders and laws administered by OFAC, and the import laws administered by U.S. Customs and Border Protection. Neither the Company nor any of its Subsidiaries has at any time been counterparty to any commercial or other agreement with any Person who is the target of, or listed as a designated person in respect of (or owned or controlled by a designated person or by a sanctioned government), any economic sanction administered by (1) OFAC (including the Specially Designated Nationals and Blocked Persons List, the Sectoral Sanctions Identifications List, or the Foreign Sanctions Evaders List) or the U.S. Department of Commerce (including the Entity List, the Denied Persons List, or the Unverified List); or (2) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom. Neither the Company nor any of its Subsidiaries has engaged, directly or indirectly, in any business with or related to any country or territory that is the subject of any comprehensive economic or financial sanctions or trade embargoes administered or enforced by OFAC, including any Person located or ordinarily resident in such country or territory (currently the Crimea and the so-called Donetsk People's Republic and Luhansk People's Republic regions, Cuba, Iran, Russia, Sudan (prior to October 2017), Syria, and North Korea).

(d) Neither the Company, nor any of its Subsidiaries, nor any of their respective Representatives acting on their behalf has at any time (i) taken any action, directly or indirectly, in violation (or that would reasonably be expected to result in any violation) of Anti-Bribery Laws, including corruptly making, offering, authorizing, or promising any payment, contribution, gift, business courtesy, bribe, rebate, kickback, or any other thing of value, regardless of form or amount, to any Person to induce the recipient to act improperly, to obtain a competitive advantage for any party, or to receive favorable treatment in obtaining or retaining business, or (ii) corruptly or improperly accepted, received, or solicited anything of value in connection with the Company or any of its Subsidiaries' respective businesses. The Company and each of its Subsidiaries conduct, and have at all times conducted, their respective businesses in compliance with Anti-Bribery Laws and none of their respective principals, shareholders, directors, officers, employees, or other agents is an official, agent, employee, or representative of any national, provincial, or local government, wholly or partially government-owned or government-controlled entity, political party, political candidate, or public international organization.

2.14 Environmental Compliance

(a) (i) The Company and each of its Subsidiaries is, and for the past five years has ~~at all times~~ been, in compliance with all Environmental Laws, which compliance has included obtaining and complying ~~at all times~~ with all approvals, authorizations, consents, licenses, notifications, Orders, registrations, and permits (and all or any conditions attaching thereto) of all Governmental Bodies required under Environmental Laws, (ii) neither the Company nor any of its Subsidiaries has treated, stored, arranged for or permitted the disposal of, transported, handled, manufactured, distributed, released, or exposed any Person to, any Hazardous Materials, or owned or operated any property or facility that is or has been contaminated by any Hazardous Materials that may give rise to any current or future Liabilities, (iii) neither the Company nor any of its Subsidiaries has received any notice regarding any actual or alleged violation of, or any Liability under, Environmental Laws, (iv) neither the Company nor any of its Subsidiaries has any Liability with respect to the presence or alleged presence of asbestos, silica, or other Hazardous Materials in any product or item or at or upon any property or facility, (v) neither the Company nor any of its Subsidiaries has assumed, provided an indemnity with respect to, or otherwise become subject to, Liabilities of any other Person relating to Hazardous Materials or Environmental Laws, (vi) there are no Claims pending or threatened against the Company or any of its Subsidiaries related to Hazardous Materials or Environmental Laws, and (vii) no capital expenditures are necessary for the Company or any of its Subsidiaries to continue to operate their respective businesses in compliance with Environmental Laws.

(b) The Company has provided the Buyer all environmental reports, assessments, and audits, in each case relating to the Company, or any of its Subsidiaries' or any of its Affiliates' past or current operations or properties that the Company, or any such Subsidiaries or Affiliates occupy or have occupied, that have been provided to, prepared by, obtained, possessed, or are otherwise available to the Company and any of its Subsidiaries.

(c) No Conflict Minerals are necessary to the functionality or production of, or are used in the production of, any Company Product or any product currently proposed to be manufactured by the Company or any of its Subsidiaries, or on the Company or any of its Subsidiaries' behalf in the future.

2.15 Taxes²⁰

(a) The Company and each of its Subsidiaries have (i) timely filed on or before the applicable due date with each appropriate Governmental Body all Tax Returns required to be filed by or with respect to the Company and any such Subsidiary, and all Tax Returns filed are accurate and complete in all material respects and (ii) fully and timely paid all Taxes due by or with respect to it (whether or not such Taxes have been reflected on any Tax Return). All Taxes that the Company and each of its Subsidiaries have been required by Applicable Law to deduct, withhold, or collect (including with respect to any amounts paid or benefits provided to employees) for payment have been duly deducted, withheld, and collected, and to the extent due and payable have

²⁰ Note to Draft: Subject to review by local tax advisors and the Company.

been paid over to the appropriate Governmental Body in compliance with Applicable Law.

~~(b) The Company Balance Sheet reflects all Liabilities for unpaid Taxes of the Company and its Subsidiaries for periods (or portion of periods) through the Company Balance Sheet Date. Neither the Company nor any of its Subsidiaries has any Liability for unpaid Taxes accruing after the Company Balance Sheet Date except for Taxes arising in the ordinary course of business and consistent with past practice following the Company Balance Sheet Date. Neither the Company nor any of its Subsidiaries has any Liability for Taxes (whether outstanding, accrued for, contingent, or otherwise) that are not included in the Company Balance Sheet.~~

(b) ~~(e)~~ (i) ~~There~~ Within the past five years, there have ~~never~~ not been and there are not currently pending, or threatened in writing, any Claims against the Company or any of its Subsidiaries by any Governmental Body with respect to Taxes ~~relating to the Company or any of its Subsidiaries,~~ (ii) no extension or waiver of the limitation period applicable to any Tax Return of the Company or any of its Subsidiaries are is in effect or have has been requested, (iii) all deficiencies claimed, proposed, or asserted or assessments made as a result of any examinations by any Governmental Body of the Tax Returns of, or with respect to, the Company or any of its Subsidiaries have been fully paid or fully settled, and there is no other procedure, proceeding, or contest of any refund or deficiency in respect of Taxes pending or on appeal with any Governmental Body, and (iv) there is no agreement relating to any extension of time for filing any Tax Return that has not been filed, ~~and (v) neither the Company nor any of its Subsidiaries is, nor will be required to include any adjustment in Taxable income for any Tax period after the Closing as a result of transactions or events occurring, or accounting methods employed, prior to the Closing (other than as a result of an automatic extension of time to file Tax Returns obtained in the ordinary course of business).~~

(c) ~~(d)~~ Neither the Company nor any of its Subsidiaries will be required to include any item of income in, nor exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date under Applicable Law with respect to Taxes, including as a result of any (i) change in method of accounting made prior to the Closing Date for a Taxable period ending on or prior to the Closing Date, (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of other Applicable Law with respect to Taxes) entered into prior to the Closing Date, (iii) deferred intercompany gain or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of other Applicable Law with respect to Taxes) with respect to a transaction occurring prior to the Closing Date, (iv) installment sale made or open transaction entered into prior to the Closing Date, (v) prepaid amount received or deferred revenue accrued on or prior to the Closing Date, or (vi) the application of Section 965 of the Code (including by reason of an election under Section 965(h) of the Code).

(d) ~~(e)~~ Neither the Company nor any of its Subsidiaries is or has been a member of any Affiliated Group that filed or was required to file a consolidated, combined, or unitary Tax Return (other than a group the parent of which was the Company or any of its Subsidiaries). Neither the Company nor any of its Subsidiaries is, nor has ever been, a party to or bound by any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement, or similar Contract, and neither the Company nor any of its Subsidiaries has any Liability or potential Liability to another Person under

any such agreement.

(e) ~~(f)~~ Neither the Company nor any of its Subsidiaries has any ~~Liability~~liability for the Taxes of any Person (other than the Company or any of its Subsidiaries, as applicable) under any Applicable Law with respect to Taxes, as a transferee or successor, by operation of Applicable Law, by Contract, or otherwise.

(f) ~~(g)~~ ~~Neither the Company nor any of its Subsidiaries has any nexus, nor has taken any action that could result in the Company or any of its Subsidiaries having taxable presence for any Tax purpose in any taxing jurisdiction other than the jurisdiction in which such entity is formed or organized.~~ Neither the Company nor any of its Subsidiaries has, nor have ever had, a “permanent establishment” within the meaning of an applicable income Tax treaty, nor otherwise has or ever had, a taxable presence, in any country other than the country in which such entity is formed or organized. No taxing jurisdiction in which the Company or any of its Subsidiaries have not filed a particular type of Tax Return or paid a particular type of Tax has asserted in writing that the Company or any of its Subsidiaries, as applicable, is required to file such Tax Return or pay such type of Tax in such taxing jurisdiction.

(g) ~~(h)~~ Neither the Company nor any of its Subsidiaries has made any payment, is obligated to make any payment, or is a party to (or a participating employer in) any Contract that could obligate the Buyer, the Company or any of its Subsidiaries to make any payment, in each case that constitutes or would constitute an “excess parachute payment,” as defined in Section 280G of the Code (or any corresponding or similar provision of Applicable Law with respect to Taxes). No payment to any person will be characterized as a “parachute payment,” within the meaning of Section 280G(b)(2) of the Code due in whole or in part to the Transactions. The Company are eligible to seek shareholder approval in a manner that complies with Section 280G(b)(5) of the Code. Neither the Company nor any of its Subsidiaries has made any payment, is obligated to make any payment or payments, or is a party to (or a participating employer in) any Contract that has resulted or could reasonably be expected to result in the imposition on the Company or any of its Subsidiaries, any current or former Shareholder or Buyer, or any employee of the Company or any of its Subsidiaries of any additional Tax or interest under Section 409A of the Code (or any corresponding or similar provision of Applicable Law with respect to Taxes), or is subject to Section 457A of the Code. ~~For all applicable Tax purposes and during all relevant times, the Company and each of its Subsidiaries have properly treated as an employee each person required to be treated as an employee of the Company or such Subsidiary, as applicable.~~

(h) ~~(i)~~ None of the Company, any of its Subsidiaries, the Buyer or any Affiliate of Buyer will be obligated to pay or reimburse any Person for any Taxes imposed under section 4999 of the Code (or any corresponding or similar provision of Applicable Law with respect to Taxes) as a result of any Contract currently in effect.

(i) ~~(j)~~ Each Employee Benefit Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code, is, and at all times has been, maintained, administered, operated, and funded in all respects in accordance with the applicable requirements of Section 409A of the Code. Neither the Company, nor any of its Subsidiaries, nor any ERISA Affiliate is party to any agreement or arrangement with any Person that requires the Company or

any of its Subsidiaries or any ERISA Affiliate to pay a tax gross-up for Taxes due under Section 409A of the Code.

(j) ~~(k)~~—The Company has delivered or made available to the Buyer correct and complete copies of all income Tax Returns and other material Tax Returns of the Company and each of its Subsidiaries for which the statute of limitations has not expired, and all audit reports and statements of deficiencies assessed against or agreed to by the Company or any of its Subsidiaries. ~~Schedule 2.15(k) to the Disclosure Memorandum is an accurate and complete listing of (i) all types of Taxes paid, and all types of Tax Returns filed by or on behalf of, the Company and each of its Subsidiaries and (ii) all of the jurisdictions that impose such Taxes or with respect to which the Company or any of its Subsidiaries have a duty to file such Tax Returns (identifying each of the jurisdictions for which the Company or any of its Subsidiaries are filing Tax Returns and the types of Taxes paid in such jurisdiction).~~

~~(l)——The Company and each of its Subsidiaries have (i) complied with Applicable Law relating to the payment, reporting, and withholding of Taxes (ii) deducted or withheld (within the time and in the manner prescribed by Applicable Law) from employee wages or consulting compensation and paid over to the proper Governmental Body (or is properly holding for such timely payment) all amounts required to be so withheld and paid over under all Applicable Law, and (iii) timely filed all withholding Tax Returns, for all periods through and including the Closing Date.~~

~~(m)——No election has been made with respect to Taxes of the Company or any of its Subsidiaries that has not been disclosed in writing to the Buyer within the past five years.~~

(k) ~~(n)~~—There are ~~(and immediately following the Closing there will be)~~ no Encumbrances on the assets of the Company or any of its Subsidiaries relating or attributable to Taxes other than Encumbrances for Taxes not yet due and payable. ~~There is no basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Encumbrance for Taxes on the assets of the Company or any of its Subsidiaries.~~

(l) ~~(o)~~—Neither the Company nor any of its Subsidiaries has participated in ~~(i) a “reportable transaction” or “listed transaction” within the meaning of Section 1.6011-4(c) of the Treasury Regulations or a “cross border arrangement” or any similar arrangement, or (ii) any other transaction that would reasonably be likely to require the filing of an IRS Schedule UTP (determined without regard to any asset threshold that may avoid the requirement of filing such schedule) or any information disclosure with a Tax Authority under Applicable Law. The Company and any Subsidiary has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return that could result in the imposition of penalties under Section 6662 of the Code or any corresponding or similar provision of Applicable Law with respect to Taxes.~~

~~(p)——The Company and any Subsidiary has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return that could result in the imposition of penalties under Section 6662 of the Code or any corresponding or similar provision of Applicable Law with respect to Taxes.~~

(m) ~~(q)~~ Neither the Company nor any of its Subsidiaries is, or has ever been, party to or the beneficiary of any Tax exemption, Tax holiday, or other Tax reduction Contract or Order. ~~The Company and, in each of its Subsidiaries has in its respective possession official government receipts for any Taxes paid by it to any Tax Authorities for which receipts have been provided or are customarily provided.~~

~~(r) — There is no limitation on the utilization of any Tax attributes of the Company or any of its Subsidiaries under any provision or provisions of Applicable Law, other than any such limitations resulting from the Transactions~~ case, that requires express Governmental Body approval therefor.

(n) ~~(s)~~ Neither the Company nor any of its Subsidiaries owns or have ever owned, directly or indirectly, an interest in a corporation, association, joint venture, partnership, limited liability company, or any other entity (other than its Subsidiaries).

(o) ~~(t)~~ Neither the Company nor any of its Subsidiaries is a controlled foreign corporation (as defined in section 957(a) of the Code) and none of the Company or any of its Subsidiaries' respective Shareholders is a United States person within the meaning of section 7701(a)(30) of the Code. Neither the Company nor any of its Subsidiaries have made the election provided under section 897(i) of the Code.

(p) ~~(u)~~ Neither the Company nor any of its Subsidiaries owns, directly or indirectly, stock or a warrant in any corporation that is (or was at any time during the course of such ownership) a passive foreign investment company, as defined in section 1297 of the Code.

~~(v) — Neither the Company nor any of its Subsidiaries is or has ever been required to report (nor would a "United States shareholder," within the meaning of Section 951(b) of the Code, of the Company or any of its Subsidiaries, if such a shareholder existed or had existed, be or have ever been required to report, as a result of its interest in the Company or any of its Subsidiaries), under Section 999 of the Code, operations in a country subject to an international boycott.~~

(q) ~~(w)~~ The Company and each of its Subsidiaries is in compliance with all applicable transfer pricing laws and regulations, including the execution and maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology of the Company and each of its Subsidiaries. The prices for any property or services (or for the use of any property) provided by or to the Company or any of its Subsidiaries are arm's length prices for purposes of all applicable transfer pricing laws.

~~(x) — Neither the Company nor any of its Subsidiaries is party to an instrument treated by the issuer as debt for Tax purposes that should properly be treated as equity under Applicable Law.~~

~~(y) — All Taxes that are required by Applicable Law to be withheld from benefits derived under the Employee Benefit Plans have been properly withheld and remitted to the proper depository in a timely manner.~~

(r) ~~(z)~~ No Tax ruling, or any other written interpretation of Applicable Law by a

Governmental Body with respect to Taxes, has been issued to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries has applied for any Tax ruling. Schedule 2.15(y) to the Disclosure Memorandum lists each entity classification election and change in entity classification that has been made under Section 301.7701-3 of the United States Treasury Regulations with respect to the Company and any of its Subsidiaries for any and all income Tax purposes.

~~2.16~~ Tax Consequences

~~The Company, each of its Subsidiaries and the Shareholders have had an opportunity to review with their own respective Tax advisors the Tax consequences to it of the Transactions and the payments thereunder. The Buyer does not make, and neither the Company, nor any of its Subsidiaries nor the Shareholders are relying upon, any representations or warranties to the Company, any of its Subsidiaries or any Shareholder regarding the Tax treatment of the Transactions, or any of the Tax consequences to the Company, any of its Subsidiaries, or any Shareholder of this Agreement, of the Transactions, or the other agreements contemplated by this Agreement or, in each case, any payments thereunder. The Company and its Subsidiaries understand that they each must rely solely upon its advisors and not on any statements or representations by Buyer or any of its agents or Affiliates. The Company, each of its Subsidiaries and the Shareholders understand that they each (and not the Buyer) will be responsible for their own respective Tax Liabilities that may arise from the Transactions within the past five years.~~

2.16 ~~2.17~~ Related Party Interests

No Shareholder, Company Service Provider, or Affiliate of the Company or any of its Subsidiaries (or, to the Knowledge of the Company, any Affiliate of the foregoing), and none of the immediate family members of any of the foregoing, has any interest (other than as an Shareholder) (i) in any Contract with the Company or any of its Subsidiaries or in any Contract relating to (A) the Company or any of its Subsidiaries, (B) the present or prospective business or operations of the Company or any of its Subsidiaries, or (C) in any other asset used in the business of the Company or any of its Subsidiaries (in each case, other than employment agreements made available to the Buyer pursuant to Section 2.8(f) and Company IP Protection Agreements) (each, a “*Related Party Contract*”), or (ii) in any Customer or Third-Party Vendor.

2.17 ~~2.18~~ Subsidies and Grants

~~Neither~~Except as set forth on Schedule 2.17, neither the Company nor any of its Subsidiaries has received any governmental subsidies or other form of public financial support, grants, guarantees or benefits which can be reclaimed or be subject to claw-back due to the change of ownership in the Company or any of its Subsidiaries resulting from the Transactions or otherwise. The Company and each of its Subsidiaries has ~~at all times~~ complied with the terms and conditions of the subsidies, grants and other similar benefits received by them. Neither the entering into this Agreement nor the consummation of the Transactions is in violation of any terms and conditions of such subsidies, financial support, grants, guarantees or benefits received or to be received by the Company or any of its Subsidiaries.

2.18 ~~2.19~~ Insurance

(a) Schedule ~~2.19~~2.18(a) to the Disclosure Memorandum sets forth an accurate and complete list of all insurance policies maintained by the Company and each of its Subsidiaries as of the Agreement Date (the “*Policies*”). Each Policy is in full force and effect ~~and will continue in full force and effect following the consummation of the Transactions~~. Neither the Company nor any of its Subsidiaries have been refused any insurance, or have had their respective coverage ~~been~~ limited, by any insurance carrier. The Company and each of its Subsidiaries maintain the Policies with a scope and amount sufficient to satisfy Applicable Law and all Contracts to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound.

(b) Neither the Company nor any of its Subsidiaries has done anything or omitted to do anything that would reasonably be expected to make any of the Policies void or voidable, or prejudice the ability to effect insurance on the same or better terms in the future. No insurer under any of the Policies has disputed, or given any indication that it intends to dispute, the validity of any of the Policies on any grounds. No Claims have been made, no Claim is outstanding and, to the Knowledge of the Company, no fact or circumstance exists that would reasonably be expected to give rise to a Claim under any of the Policies. No event, act, or omission has occurred that requires notification under any of the Policies. None of the insurers under any of the Policies has refused, or given any indication that it intends to refuse, indemnity in whole or in part in respect of any Claims under the Policies. Nothing has been done or omitted to be done by the Company or any of its Subsidiaries, and there are no facts or circumstances that would reasonably be expected to entitle the insurers under any of the Policies to refuse indemnity in whole or in part in respect of any claims under the Policies.

2.19 ~~2.20~~ Brokers or Finders

Neither the Company nor any of its Subsidiaries has or will have, directly or indirectly, any Liability for brokers’ or finders’ fees, commissions, or any similar charges in connection with the origin, negotiation, or execution of this Agreement or in connection with any of the Transactions.

2.20 ~~2.21~~ Bank Accounts

Schedule ~~2.21~~2.20 to the Disclosure Memorandum sets forth as of the Agreement Date an accurate and complete list of (a) the names and locations of all banks, trust companies, securities brokers, online money transmitters, and other financial institutions at which the Company or any of its Subsidiaries has an account or safe deposit box or maintains a banking, custodial, trading, or other similar relationship, (b) each such account, box, and relationship, indicating in each case the account number and the names of the respective Company Service Providers or other similar representatives of the Company or any of its Subsidiaries, as applicable, having signatory power with respect thereto, (c) all existing and valid payment instruments and authorizations related to the accounts, boxes, and relationships required to be listed under clause (b), including the names of the respective Company Service Providers or other similar representatives of the Company or any of its Subsidiaries, as applicable, or third parties controlling such instruments, and (d) each investment of the Company and of each of its Subsidiaries held through or in each such account,

box, and relationship, including the name of the record and beneficial owner thereof, the location of the certificates, if any, the maturity date, if any, and any Shares or bond powers or other authority for transfer granted with respect thereto. The Company will advise the Buyer of any changes to the matters set forth in this Section ~~2.21~~2.20 from the Agreement Date until the earlier of the Closing and the termination of this Agreement in accordance with Article IX.

2.21 ~~2.22~~ Customers and Suppliers

(a) Schedule ~~2.22~~2.21(a) to the Disclosure Memorandum sets forth an accurate and complete list of the Company's and each of its Subsidiaries' customers by revenue during the 12 months prior to the Agreement Date (collectively, the "**Customers**"), showing the approximate total revenues from each such Customer during such 12-month period. No Customer has, during the 12 months prior to the Agreement Date, decreased or limited in any material respect or, to the Knowledge of the Company, threatened to decrease or limit in any material respect, its purchase of Company Products. Schedule ~~2.22~~2.21(a) to the Disclosure Memorandum sets forth by Customer the number of Company Products returned to the Company or any of its Subsidiaries and the amounts refunded in respect of such returns during the 12 months prior to the Agreement Date. During the 12 months prior to the Agreement Date, neither the Company nor any of its Subsidiaries has rejected a purchase order, work order, invoice, or other written request for the purchase of Company Products due to the Company or such Subsidiary's inability or expected inability to manufacture or supply the quantity of Company Products set forth in such purchase order, work order, invoice, or other written request. Neither the Company nor any of its Subsidiaries has received any notice of, and, to the Knowledge of the Company, no circumstance exists that would cause the Company or any of its Subsidiaries to expect, any material modification to the Company or any of its Subsidiaries' relationships, as applicable with any Customer, nor is there or has there been, during the 12 months prior to the Agreement Date, any material dispute with or Claim by any of the Company or any of its Subsidiaries' customers, as applicable, concerning the purchase of Company Products. Neither the Company nor any of its Subsidiaries has received any notice of, and, to the Knowledge of the Company, no circumstance exists that may cause the Company or any of its Subsidiaries to expect, any customer allegations of a defect or Claim in respect of any Company Products that is reasonably likely to be reflective of a material recurring product defect, to lead to a product recall or to form the basis for a potential class action recourse by customers.

(b) Schedule ~~2.22~~2.21(b) to the Disclosure Memorandum sets forth an accurate and complete list of all suppliers, vendors, original equipment manufacturers, manufacturing subcontractors, distributors, and other third-party service providers of the Company and its Subsidiaries (including third-party providers of manufacturing services) (each, a "**Third-Party Vendor**") by the amount of payments made to each such Third-Party Vendor during the 12 months prior to the Agreement Date, showing the approximate total payments to each such Third-Party Vendor during such 12-month period. No Third-Party Vendor has during the 12 months prior to the Agreement Date decreased or limited in any material respect or, to the Knowledge of the Company, threatened to decrease or limit in any material respect, its supply or services to the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has received any notice of, and, to the Knowledge of the Company, no circumstance exists that would cause the Company or any of its Subsidiaries to expect, any material modification to the Company or any of

its Subsidiaries' relationships with any Third-Party Vendor, nor is there or has there been, during the 12 months prior to the Agreement Date, any material dispute with or Claim by any Third-Party Vendor concerning such Third-Party Vendor's supply or services to the Company or any of its Subsidiaries.

(c) The Company has made available to the Buyer a register of all written Claims received by the Company and each of its Subsidiaries during the twelve months prior to the Agreement Date from any Customer or Third-Party Vendor other than in respect of ordinary course delivery delays or product returns.

(d) As of the Agreement Date, the Company and each of its Subsidiaries has sufficient manufacturing and supply capacity to meet normal historic demands and forecasts from Customers for Company Products.

(e) As of the Agreement Date, neither the Company nor any of its Subsidiaries is experiencing any material supply chain- or manufacturing-related issues, disruptions or interruptions that adversely impact the Company or any such Subsidiary's ability to meet normal historic demands and forecasts from Customers of Company Products.

2.22 ~~2.23~~ Employee Notification

The Company and each of its Subsidiaries has informed and consulted with the relevant works council or other employment representative body of the Company or such Subsidiary, as applicable, with respect to the Transactions prior to or on the date of this Agreement as (and to the extent) required pursuant to Applicable Law.

~~2.24 — Full Disclosure~~

~~No information furnished by the Company, any of its Subsidiaries or any of their respective Representatives to the Buyer or their respective Representatives in connection with this Agreement (including the Financial Statements and all information in the Disclosure Memorandum and the other Exhibits and Schedules hereto) or the other Operative Documents, and none of the representations or warranties made by the Company and each of its Subsidiaries in this Agreement or in the Disclosure Memorandum, the Exhibits or Schedules hereto or any Operative Document, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made or information so delivered not misleading~~

2.23 No Other Representations and Warranties

Except for the representations and warranties contained in this Article II, none of the Company, its Representatives, its Subsidiaries, the Shareholders, or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Company or its Subsidiaries, including any representation or warranty as to the accuracy or completeness of any information regarding the Company or its Subsidiaries furnished or made available to Buyer and its Representatives (including management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Company, or any representation or warranty arising from statute or

[otherwise in law.](#)

ARTICLE III **REPRESENTATIONS AND WARRANTIES OF THE** **~~EQUITYHOLDERS~~SHAREHOLDERS**

In order to induce the Buyer to enter into and perform this Agreement, each of the Shareholders who is a Party, individually and not jointly, represents and warrants to the Buyer as follows:

3.1 Ownership

Such Shareholder is the exclusive holder of record of, and beneficially owns the equity set forth opposite such Shareholder's name on Schedule 3.1 to the Disclosure Memorandum free and clear of any Encumbrance, and such Shareholder does not own, directly or indirectly, any other shares in the capital of, or options, warrants, or other rights to acquire from the Company any shares in the capital of, or other equity or voting interests in, or any securities convertible into or exchangeable for shares in the capital of, or other equity or voting interests in, the Company.

3.2 Authority and Enforceability; No Conflicts

(a) Such Shareholder has full power, including corporate power where such Shareholder is a corporation, to execute this Agreement and the other Operative Documents to which it is (or will be) a party, to perform its obligations pursuant to this Agreement and the other Operative Documents and to consummate the Transactions.

(b) This Agreement has been duly executed and delivered by such Shareholder and, assuming the due authorization, execution, and delivery by each of the other Parties to this Agreement, this Agreement is the legal, valid, and binding obligation of such Shareholder, enforceable against the Shareholder in accordance with its terms, and each of the other Operative Documents to which such Shareholder is (or will be) a party, when executed by such Shareholder, and assuming the due authorization, execution, and delivery by each of the other parties in the other Operative Documents, is (or will be) the legal, valid, and binding obligation of such Shareholder, enforceable against such Shareholder in accordance with its terms, in each case, except to the extent such enforceability is subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or other Applicable Law affecting or relating to creditors' rights generally and general principles of equity.

(c) None of the execution and delivery of this Agreement and any other document furnished or to be furnished under this Agreement by the Shareholders, the performance by the Shareholders of their obligations under the Operative Documents and the completion of the Transactions by the Shareholders, will (i) result in a breach of Applicable Law, (ii) require any Shareholder to obtain any consent or approval of, or give any notice to or make any filing or registration with, any governmental authority or any other Person, or (iii) in the case of the Shareholders being corporations, result in a breach of any provision of the articles of association or any other constitutional documents of such Shareholder.

~~3.3~~ Tax Consequences

~~Such Shareholder has had an opportunity to review with his, her, or its own Tax advisors the Tax consequences to him, her or it of the Transactions. The Buyer does not make, and no Shareholder is relying upon, any representations or warranties to the Company or any Shareholder regarding the Tax treatment of the Transactions, or any of the Tax consequences to the Company or any Shareholder of this Agreement, the Transactions, or the other agreements contemplated by this Agreement. Such Shareholder understands that he, she or it is relying solely upon his, her, or its advisors and not on any statements or representations by the Buyer or any of its Representatives or Affiliates. Such Shareholder further understands that he, she or it (and not the Buyer) will be responsible for his, her, or its own Tax Liabilities that may arise from the Transactions.~~

3.3 ~~3.4~~ Brokers or Finders

Such Shareholder does not and will not have, directly or indirectly, any Liability for brokers' or finders' fees, commissions, or any similar charges in connection with the origin, negotiation or execution of this Agreement or in connection with any of the Transactions.

3.4 ~~3.5~~ Bankruptcy

No petition under any Applicable Laws relating to bankruptcy ~~Laws~~ or ~~any~~ insolvency ~~Laws~~ has been filed, or, to the knowledge of such Shareholder, threatened to be filed, by or against such Shareholder.

~~3.6~~ Full Disclosure

~~No information furnished by such Shareholder, or any of his, her, or its Representatives to the Buyer or its Representatives in connection with this Agreement (including the Financial Statements and all information in the Disclosure Memorandum and the other Exhibits and Schedules hereto) or the other Operative Documents, and none of the representations or warranties made by such Shareholder in this Agreement or in the Disclosure Memorandum, the Exhibits or Schedules hereto or any Operative Document, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made or information so delivered not misleading~~

3.5 No Other Representations and Warranties

Except for the representations and warranties contained in this Article III, none of the Company, its Representatives, its Subsidiaries, the Shareholders, or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Shareholders, including any representation or warranty as to the accuracy or completeness of any information regarding the Company or its Subsidiaries furnished or made available to Buyer and its Representatives (including management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Company, or any representation or warranty arising from statute or otherwise in law.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE BUYER

In order to induce the Company and the Shareholders to enter into and perform this Agreement, the Buyer represents and warrants to the Company and the Shareholders as follows:

4.1 Organization and Good Standing

The Buyer is a société à responsabilité limitée duly organized, validly existing, and in good standing under the laws of the Grand Duchy of Luxembourg.

4.2 Authority and Enforceability

The Buyer has full power and authority to execute this Agreement and the other Operative Documents to which it is (or will be) a party and to perform its obligations pursuant to this Agreement and the other Operative Documents and to consummate the Transactions. This Agreement has been duly executed and delivered by the Buyer and, assuming the due authorization, execution, and delivery by each of the other Parties hereto, this Agreement is the valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, and each of the other Operative Documents to which the Buyer is (or will be) a party, when executed by the Buyer, and assuming the due authorization, execution, and delivery by each of the other parties thereto, is (or will be) the valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms except, in each case, to the extent such enforceability is subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or other Applicable Law affecting or relating to creditors' rights generally and general principles of equity.

4.3 No Approvals; No Conflicts

The execution, delivery, and performance by the Buyer of this Agreement and the other Operative Documents to which the Buyer is (or will be) a party and the consummation by the Buyer of the Transactions does not and will not (a) violate (with or without the giving of notice or lapse of time, or both) Applicable Law, (b) require any consent, approval or authorization of, declaration, filing, or registration with, or notice to, any Person, or (c) conflict with or result in a breach of or constitute a default under any provision of the governing documents of the Buyer, except where such violation, absence of consent, approval, authorization, declaration, filing or registration, or default, individually or in the aggregate, would not be materially adverse to Buyer's ability to consummate the Transactions or to perform its obligations under [this Agreement](#).

4.4 Independent Investigation

Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company, its Representatives, its Subsidiaries, and the Shareholders for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the

transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties set forth in Article II and Article III of this Agreement; and (b) none of the Company, its Representatives, its Subsidiaries, the Shareholders, or any other Person has made any representation or warranty as to none of the Company, its Representatives, its Subsidiaries, the Shareholders, or this Agreement, except as expressly set forth in Article II and Article III of this Agreement.

ARTICLE V COVENANTS

5.1 Covenants of the Company and the Shareholders Prior to the Closing

Prior to the Closing, unless the Buyer otherwise agrees in writing, the Company and each of its Subsidiaries will, and the Shareholders, as applicable, will cause the Company and its Subsidiaries to conduct the business of the Company and such Subsidiaries in the ordinary course of business and consistent with past practice and in accordance with Applicable Law. The Company and each of its Subsidiaries will, and the Shareholders, as applicable, will cause the Company and each of its Subsidiaries to use commercially reasonable efforts to preserve intact the business organization of the Company and its Subsidiaries, to keep available the services of the Company Service Providers as of the Agreement Date (except as otherwise set forth in this Agreement), and to preserve the goodwill and current relationships of the Company and each of its Subsidiaries with customers, suppliers and other Persons with which the Company or any of its Subsidiaries have significant business relations. Without limiting the generality of the foregoing, unless the Buyer otherwise agrees in writing or as expressly contemplated by this Agreement, the Company will not and will cause each of its Subsidiaries not to, and the Shareholders, as applicable, will cause the Company and each of its Subsidiaries not to (and will not permit any of the Company or any of its Subsidiaries' Representatives to), between the Agreement Date and the earlier of the Closing and the termination of this Agreement in accordance with Article IX:

(a) amend or otherwise change the governing documents of the Company or any of its Subsidiaries;

(b) (i) issue, sell, contract to issue or sell, pledge, dispose of, grant, encumber, or authorize the issuance, sale, pledge, disposition, grant, or Encumbrance of any Shares, warrants or other rights to purchase or subscribe for or agree to subscribe for Shares, or other ownership interest (including any phantom interest), of the Company or any of its Subsidiaries, or any revenue or profit-sharing interest in respect of the Company or any of its Subsidiaries, or (ii) approve, consent to or otherwise authorize the transfer of any Shares of the Company or any of its Subsidiaries from an existing shareholder to another Person;

(c) declare, set aside, make, or pay any dividend or other distribution with respect to any security of the Company or any of its Subsidiaries;

(d) reclassify, combine, split, subdivide, redeem, purchase, or otherwise acquire, directly or indirectly, any security of the Company or any of its Subsidiaries;

- (e) acquire or invest in any Person or division thereof;
- (f) incur or repay, or amend any terms of, any indebtedness for borrowed money (other than trade payables or accruals in the ordinary course of business and consistent with past practice on arm's length terms), or issue any debt securities or assume, guarantee, endorse, or otherwise become responsible for the obligations for borrowed money of any Person, or make any loans or advances;
- (g) enter into, amend, terminate, or fail to renew any Material Contract (or any Contract that would constitute a Material Contract if it were in effect as of the Agreement Date);
- (h) accept non-cancelable purchase orders from customers containing any minimum volume or purchase or sale commitments that would result in manufacturing commitments as of the Closing that materially exceed the manufacturing commitments of the Company or any of its Subsidiaries incurred in the ordinary course of business;
- (i) authorize, make, or agree to any single capital expenditure, outside the course of ordinary business, that is in excess of \$[100,000] or capital expenditures, outside the course of ordinary business, that are in the aggregate in excess of \$[250,000];⁺⁶²¹
- (j) (i) increase, defer, or fail to pay the compensation or other amounts payable or to become payable to its current, former, or prospective Company Service Providers, or grant any severance or termination pay, other than pursuant to any Employee Benefit Plan in effect as of the Agreement Date, to any current, former, or prospective Company Service Provider, or establish, adopt, enter into, amend, terminate, or fail to renew any Employee Benefit Plan, collective bargaining, or other Contract, trust, fund, or policy for the benefit of any Company Service Provider, (ii) make any equity awards to any Company Service Provider, (iii) take any action to accelerate the vesting or payment, or fund or in any other way secure the payment, of compensation or benefits under any Employee Benefit Plan to the extent not required by this Agreement or such Employee Benefit Plan as in effect on the Agreement Date, (iv) hire or engage the services of any additional Company Service Providers, or (v), unless reasonably necessary, terminate the employment or services, as applicable, of any Company Service Provider;
- (k) (i) make any change with respect to accounting methods or practices or internal accounting control, inventory, investment, credit, allowance, ~~or Tax procedures or practices~~, or (ii) increase or change any of the assumptions underlying, or methods of calculating, any bad debt, contingency, or other reserves;
- (l) (i) make, revoke, or alter any material Tax election, settle or compromise any Tax ~~Liability~~liability or Tax Contest, ~~or take any action that would or is reasonably likely to result in the Company or any of its Subsidiaries having nexus or otherwise being subject to Tax or any Tax Return filing obligation in any jurisdiction in which the Company or any of its Subsidiaries have not filed Tax Returns as of the Agreement Date~~, file any amended Tax Return ~~or file any Tax Return being filed late~~ or surrender any right to claim a Tax refund, offset, or other reduction in

⁺⁶²¹ Note to Draft: Dollar threshold amounts subject to Buyer's review of Company's capex plan.

Tax Liability, (ii) extend any statute of limitations with respect to any Tax Return, (iii) enter into any Tax sharing ~~or similar~~ agreement or “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of other Applicable Law with respect to Taxes), (iv) assume any ~~Liability~~liability for the Taxes of any other Person (whether by Contract or otherwise), or (v) consent to any extension or waiver of the limitation period applicable to any Claim or assessment in respect of Taxes, ~~(vi) enter into any intercompany transactions giving rise to deferred gain or loss of any kind or take any other similar action relating to the filing of any Tax Return or the payment of any Tax if such similar action would have the effect of increasing the Tax Liability of the Buyer or its Affiliates for any period ending after the Closing Date or decreasing any Tax attribute of the Company or any of its Subsidiaries existing on the Closing Date, (vii) enter into or amend any intercompany pricing agreement, or (viii) with the exception of items occurring as a result of the Transactions, accelerate or move any Tax deduction, attribute, or benefit to the Pre-Closing Tax Period or defer any Tax detriment or taxable income to the Post-Closing Tax Period, other than in the ordinary course of business and consistent with past practice;~~

(m) commence, pay, discharge, or satisfy any Claim, Liability, right, or obligation (absolute, accrued, asserted or unasserted, contingent, or otherwise), other than the commencement, payment, discharge, or satisfaction in the ordinary course of business and consistent with past practice of Claims, Liabilities, and obligations reflected or reserved against in the Company Balance Sheet or incurred in the ordinary course of business and consistent with past practice since the Company Balance Sheet Date and that do not result from any breach of Contract, warranty, infringement tort, or violation of Applicable Law;

(n) forgive, release, cancel, subordinate, write off, or defer any indebtedness or other obligations for borrowed money (including principal and accrued but unpaid interest thereon) owed to the Company or any of its Subsidiaries, or waive any claims or rights of material value;

(o) prepay any obligation having a fixed maturity of more than 90 days from the date such obligation was issued or incurred;

(p) purchase or sell, transfer, license, lease, or otherwise dispose of any material properties or assets (real, personal, or mixed, tangible or intangible), other than the purchase of inventory in the ordinary course of business and consistent with past practice;

(q) terminate, or give notice to terminate, any lease, tenancy, or license for real property or agree to a new rent or fee payable under any lease, tenancy, or license for real property;

(r) assign, forfeit, or permit to lapse, or instruct or consent to a future lapse of, any Company Intellectual Property Rights;

(s) make or approve any write-off or write-down or any determination to write-off or write-down any of the assets or properties of the Company or any of its Subsidiaries;

(t) pay, loan, or advance any amount to, or sell, transfer, license, lease, or otherwise dispose of any properties or assets (real, personal, or mixed, tangible or intangible) to, any of the Company or any of its Subsidiaries’ current or former securityholders, debtholders, Company

Service Providers, or any of their respective Affiliates, other than (i) cash compensation paid to Company Service Providers at rates not exceeding the rates of compensation paid during the fiscal year last ended and (ii) advances for travel and other business-related expenses made in the ordinary course of business and consistent with past practice;

(u) take any action that would or is reasonably likely to result in (i) the Breach of any of the representations or warranties of the Company, any of its Subsidiaries or any Shareholder set forth in this Agreement or any other Operative Document, (ii) the Breach of any covenant of the Company, any of its Subsidiaries or any Shareholder set forth in this Agreement or any other Operative Document, or (iii) any of the conditions specified in Article VI or Article VII not being satisfied;

(v) take any action to induce or try to induce any ~~Offered~~Key Employee to terminate or Breach his or her Offer Letter or NDA entered into with the Buyer or any Buyer Entity, or take any action to induce or try to induce any Company Service Provider to terminate his or her employment or services with the Company or any of its Subsidiaries prior to the Closing;

(w) accelerate or delay the collection of, or discount, any Accounts Receivable, accelerate, delay or agree to defer the payment of accounts payable, accelerate or delay the incurrence of expenses, or increase or decrease inventories, change cash management practices or take actions that would otherwise increase or decrease Working Capital, except in the ordinary course of business and consistent with past practice, or otherwise alter the manner in which the Company or any of its Subsidiaries manage their respective working capital;

(x) offer or provide any products or services, directly or indirectly, in any jurisdiction where not offered or provided as of the Agreement Date;

(y) incorporate a company, register a branch, or apply for any regulatory license in any jurisdiction (except for renewals of any Company Permit in force as of the Agreement Date in the ordinary course of business and consistent with past practice); or

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

5.2 Third-Party Consents; Terminations and Amendments; Notices; Actions

The Company will use commercially reasonable efforts to (i) obtain as promptly as practicable following the Agreement Date, and in any event prior to the Closing, the consent or approval (or waiver thereof) of each Person who has a right to consent or approval in connection with the Transactions, ~~including each party to the Contracts~~ listed in the attached *Exhibit C-1* (the “*Required Consents*”), which consents will be in a form reasonably satisfactory to the Buyer, (ii) terminate or amend, in the Buyer’s sole discretion, prior to the Closing, each of the Related Party Contracts and those Contracts listed in the attached *Exhibit C-2* (the “*Required Contracts*”), which terminations or amendments will be in a form reasonably satisfactory to the Buyer, (iii) deliver notice as promptly as practicable following the Agreement Date, and in any event prior to the earlier of the Closing and the date on which notice is required to be delivered under the applicable Contract, to each Person who has a right to receive notice in connection with the Transactions,

including each party to the Contracts listed in the attached *Exhibit C-3* (the “*Required Notices*”), which notices will be in a form reasonably satisfactory to the Buyer, and (iv) complete prior to the Closing, the actions set forth in the attached *Exhibit D* (the “*Required Actions*”), which actions will be completed in a manner reasonably satisfactory to the Buyer.

5.3 Further Action

(a) The Company, each of its Subsidiaries, each of the Shareholders and the Buyer will take any actions reasonably necessary or appropriate to consummate the Transactions and fulfill the conditions to the Closing set forth in this Agreement as promptly as practicable following the Agreement Date, including, with respect to the Company and each of its Subsidiaries, (a) taking such actions as to encourage the ~~Offered~~Key Employees to accept employment with the Buyer or its Affiliates and (b) delivering to the Buyer such certificates and other documents as required to satisfy each of the conditions set forth in Article VI. To the extent any condition to the Closing is that a document be acceptable or to the satisfaction of the Buyer, this Section 5.3 will not require the Buyer to waive such right or otherwise accept a document that is not acceptable or satisfactory to the Buyer. The Company, each of its Subsidiaries, each of the Shareholders, and the Buyer will take, any further actions reasonably necessary or desirable to carry out the purposes of this Agreement or any other Operative Document as may be requested by the other Parties hereto. This Section 5.3 shall also not require the Buyer or its Affiliates to take or agree to take any action intended to prevent or resolve any Legal Proceeding arising under the Antitrust Laws.

(b) In furtherance and not in limitation of the terms of Section 5.3(a), the Company, each of its Subsidiaries and the Shareholders shall, to the extent permitted under Applicable Law, (i) promptly inform Buyer of the receipt of any inquiry, notification, request for information, or investigation, from any Governmental Body in connection with the Transactions, including under any applicable Antitrust Laws, and provide Buyer a copy of any notices or other written communications related thereto, (ii) cooperate with Buyer in the making of any submissions or filings under any applicable Antitrust Laws or otherwise requested to be made by any Governmental Body in connection with the Transactions, including by providing Buyer or its outside counsel with an opportunity to review and comment on any such submission or filings to be made by the Company, any of its Subsidiaries or the Shareholders prior to their submission and by supplying Buyer or its outside counsel with any information that may be required or requested by any Governmental Body in connection with such submissions or filings to be made by Buyer. Neither the Company nor any of its Subsidiaries shall, without the prior written consent of Buyer, permit any of the Company or any of its Subsidiaries’ Representatives to participate in any meeting with any Governmental Body relating to the Transactions unless the Company consults with Buyer in advance and, to the extent permitted by such Governmental Body, grants Buyer the opportunity to attend and lead the discussions at such meeting.

5.4 Confidentiality

~~At all times on~~On and after the Agreement Date, neither the Company, nor any of its Subsidiaries nor any Shareholder will, and each of them will cause their respective Representatives not to, make any statements to any third party with respect to this Agreement, the existence of this Agreement, or the Transactions, or disclose to any third party any confidential information of the

Company or any of its Subsidiaries, or of the Buyer, or of any of their Affiliates. This Section 5.4 will not restrict disclosures by the Company, any of its Subsidiaries or any Shareholder (a) to their legal and financial advisors (so long as the same are obligated to maintain the confidentiality of the information provided) or (b) to the relevant ~~Offered~~Key Employees in connection with the Offer Letters and the NDAs. Each Shareholder further agrees that he or she will not, as a result, in connection with, or in reference to this Agreement, libel, slander, or disparage the Company or any of its Subsidiaries, the Buyer, or any of their respective Affiliates, managers, supervisors, officers, directors, employees, shareholders, and agents, in any manner likely to be harmful to them or their business, business reputation, or personal reputation.

5.5 Non-Competition and Non-Solicitation

(a) During the three-year period commencing on the Closing Date (the “***Restricted Period***”), each Shareholder will not be employed by, consult with, or otherwise perform services for, own, manage, operate, join, control, or participate in the ownership, management, operation, or control of, or otherwise be connected with or related to, in any manner, directly or indirectly (including through one or more of such Person’s Affiliates), any Competitor, unless released from such obligation in writing by the Buyer. Without limiting the foregoing, a Shareholder will be deemed to be related to or connected with a Competitor if, among other things, such Competitor is (i) a partnership in which such Shareholder is a general or limited partner or employee, (ii) a corporation or association of which such Shareholder is an equityholder, officer, employee, or director, (iii) a limited liability company in which such Shareholder is a manager, member, or employee, or (iv) a partnership, corporation, limited liability company, or association of which such Shareholder is a member, consultant, or agent. Nothing in this Section 5.5(a) will prevent the purchase or ownership by a Shareholder of equity securities of a Competitor that constitute less than ~~15~~5% of the outstanding equity securities of such Competitor traded on any national securities exchange if such Shareholder has no other relationship with such Competitor. The restrictions in this Section 5.5(a) are in addition to and cumulative, and do not override any non-competition or non-solicitation terms to which such Shareholder may have agreed to in other capacities, including as an employee of the Company or any of its Subsidiaries or any Buyer Entity.

(b) To the fullest extent permitted by Applicable Law, during the Restricted Period, each Shareholder will not (and will cause his, her, or its Affiliates not to) (i) employ or engage, or directly or indirectly solicit, coerce, or initiate enticement of, any director, officer, employee, consultant, or third-party contractor employed or engaged by the Buyer, the Company or any of its Subsidiaries or any of their respective Affiliates to cease his, her, or its relationship with the Buyer, the Company or any of its Subsidiaries or any of their respective Affiliates, or (ii) solicit, influence, entice, or in any way divert any customer, partner, distributor, supplier, or joint venturer of the Buyer, the Company or any of its Subsidiaries or any of their respective Affiliates from continuing to do business with the Buyer, the Company or any of its Subsidiaries, or any of their respective Affiliates at historic or previously planned or intended levels; and

(c) Each Shareholder acknowledges and agrees that the restrictions set forth in this Section 5.5 are reasonable in view of the nature of the business in which the Company and each of its Subsidiaries are engaged and compliance with the provisions of this Section 5.5 is necessary and proper to preserve and protect the ownership interest in the business of the Company and each

of its Subsidiaries, including the goodwill of such business, to be acquired by the Buyer under this Agreement and to ensure that the Parties receive the benefits intended to be conveyed pursuant to this Agreement. Accordingly, the Shareholders agree that any failure by the Shareholders or any of their respective Affiliates to comply with this Section 5.5 will entitle the Buyer, the Company and each of its Subsidiaries, and their respective Affiliates, in addition to seek such other relief and remedies as may be available, to seek equitable relief, including the remedy of injunction. Resort to any remedy will not prevent the concurrent or subsequent employment of any other remedy, or preclude the recovery by the Buyer, the Company or any of its Subsidiaries, or any of their respective Affiliates of monetary damages and compensation.

(d) Notwithstanding anything to the contrary in this Agreement, including Section 10.3, (i) the covenants in this Section 5.5 are severable and separate, and the unenforceability of any specific covenant will not affect the continuing validity and enforceability of any other covenant, and (ii) in the event any court of competent jurisdiction will determine that the scope or time restrictions set forth in this Section 5.5 are unreasonable ~~and therefore~~ or unenforceable, then it is the intention of the Parties that such restrictions be enforced to the fullest extent that such court deems reasonable, and this Agreement will thereby be reformed. Each Shareholder expressly acknowledges that the restrictions contained in this Section 5.5 do not preclude such Shareholder from earning a living.

5.6 Exclusivity

(a) Prior to the earlier of the Closing and the termination of this Agreement in accordance with Article IX, the Company will not, and will cause each of its Subsidiaries not to, and the Shareholders will not (and will not permit the Company's or any Subsidiary's respective directors, officers, employees, equityholders or other investors, Affiliates, financial advisors, attorneys, accountants, or other representatives (collectively, "**Representatives**")) to, directly or indirectly, (i) accept, or enter into any agreement with respect to, any existing proposal or offer outstanding as of the Agreement Date or received after the Agreement Date from any other Person to consummate a Competing Transaction, or (ii) solicit, initiate, facilitate or encourage, engage in discussions or negotiations with, or furnish information to, any Person other than the Buyer with respect to a Competing Transaction.

(b) (i) The Company, its Subsidiaries and the Shareholders will cause any pending discussions or negotiations with any other Person regarding a Competing Transaction to be immediately terminated; (ii) the Company and each of its Subsidiaries will, and the Shareholders will cause the Company and each of its Subsidiaries to, terminate access by any Person other than the Buyer to any virtual or electronic data room containing confidential information regarding the Company or any of its Subsidiaries and will request from each Person that had access to any such data room (other than the Buyer and its Representatives) the prompt return or destruction of all non-public information with respect to the Company or any of its Subsidiaries previously provided to such Person; and (iii) the Company, each of its Subsidiaries and the Shareholders will not, and will cause their respective Representatives not to, directly or indirectly, deal with any Person other than Buyer with respect to discussing or negotiating any Competing Transaction. The Company will notify the Buyer immediately if any inquiry or proposal regarding a Competing Transaction is made, including in such notice the identity of the Person making the inquiry or proposal, the

terms thereof, and, if in written form, complete and accurate copies thereof.

5.7 Tax Matters²²

(a) The Buyer, on one hand, and the Shareholders, on the other, will each be liable for, ~~and will indemnify and hold the Buyer harmless against, fifty percent (50%) of~~ any Transfer Taxes that become payable in connection with Buyer's purchase of the Shares pursuant to this Agreement. ~~Each of the Shareholders~~ The Person required pursuant to Applicable Law will, at its own expense, file, or cause to be filed, in a timely manner all necessary documents (including all Tax Returns) with respect to all such Transfer Taxes if required by Applicable Law.

~~(b) — From the execution of this Agreement to the earlier of the Closing or the effective time of the termination of this Agreement in accordance with Article IX, the Company and each of its Subsidiaries will, and the Shareholders will cause the Company and each of its Subsidiaries to, and the Company and each of its Subsidiaries will cause the Company Service Providers to, afford the Representatives of the Buyer access at all~~ The Buyer and the Shareholders shall use commercially reasonable times efforts to the Company Service Providers and properties, offices and other facilities, and books and records of the Company and each of its Subsidiaries and will furnish the Buyer with all financial, operating, and other data and information as the Buyer may reasonably request reduce or eliminate any such Transfer Taxes.

(b) Following the Closing, the Buyer and the Holder Representative will provide each other with such assistance as may reasonably be requested in connection with the preparation of any ~~financial statements, Tax Return, Tax~~ audit, or other Legal Proceeding ~~by any Governmental Body, or any Legal Proceeding~~ relating to ~~Liabilities~~ liabilities for Taxes. Such assistance will include making employees available on a mutually convenient basis to provide additional information or explanation of material provided in this Agreement and will include providing copies of relevant Tax Returns and supporting material. The Company and its Subsidiaries will retain and provide the Buyer and the Holder Representative ~~will retain and provide each other~~ with any records or information that may be relevant to such preparation, Legal Proceeding, or determination. Notwithstanding anything to the contrary in this Agreement, neither the Buyer nor any of its Affiliates will be required to provide any Tax information that it regards as privileged or confidential, including any Tax Return of Buyer or its Affiliates.

(c) In the case of any Straddle Period, the amount of any Taxes for Pre-Closing Tax Periods will (i) in the case of any real or personal property Taxes or similar *ad valorem* Taxes, be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction the numerator of which is the number of days in the Taxable period ending on the Closing Date and the denominator of which is the number of days in the Straddle Period, and (ii) in the case of any other Tax, be deemed equal to the amount that would be payable if the relevant Taxable period ended on the Closing Date, except that exemptions, allowances, or deductions that are calculated on an annual basis (including depreciation and amortization deductions), other than with respect to property placed in service after the Closing, will be allocated on a per diem basis.

²² Note to Draft: Subject to review by local tax advisors.

(d) At or prior to the Closing, the Company shall deliver to Buyer a certification, in a form reasonably acceptable to Buyer, certifying that interests in the Company's United States Subsidiary do not constitute "United States real property interests" under Section 897(c) of the Code.

~~(e) If the Buyer determines to correct a Tax practice (including one relating to the filing, reporting, withholding, or payment of any Tax) in respect of a Pre-Closing Tax Period, any out-of-pocket costs of correcting such practice will be deemed to be a Pre-Closing Tax and any administrative (or other similar) proceedings associated with such correction will be treated as a Tax Contest.~~ Buyer and its Affiliates shall not make, or cause to be made, any election under Section 336 of the Code or Section 338 of the Code (or any similar provision under state, local or non-U.S. Law) with respect to the Transactions.]

(f) Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company and each of its Subsidiaries with respect to any taxable period that begins on or before the Closing Date that are first due after the Closing Date. Any Tax Return described in the first sentence of this clause shall be prepared in a manner consistent with past practice of the Company and its Subsidiaries and without a change of any election or any accounting method (unless otherwise required by Law). Buyer shall provide to the Holder Representative drafts of any such Tax Returns, in each case at least twenty (20) days prior to the due date of such return for Holder Representative's review and comment. Buyer shall consider in good faith any reasonable changes to such Tax Returns proposed by the Holder Representative within ten (10) days of the Holder Representative's receipt of such Tax Returns and shall not unreasonably withhold incorporation of the Representative's reasonable comments.

(g) If any Tax Authority issues to Buyer or its Affiliates (including, for the avoidance of doubt, the Company and its Subsidiaries after the Closing), a written notice of any Tax Contest, Buyer shall notify the Holder Representative of its receipt of such communication from the Tax Authority within fifteen (15) Business Days of receipt stating the nature and basis of such claim and the amount thereof to the extent known; provided that failure to so notify the Holder Representative shall not relieve the Shareholders from their obligations hereunder unless and solely to the extent the Shareholders' are materially prejudiced thereby. Buyer shall, at its own expense, control, with representatives of its choosing, any Tax Contest; provided that (i) Buyer shall control each Tax Contest diligently and in good faith, (ii) the Holder Representative (on behalf of the Shareholders) shall be entitled to participate in each Tax Contest at the expense of the Shareholders and retain advisors of its choice, (iii) Buyer shall keep the Holder Representative reasonably informed with respect to the commencement, status and nature of each Tax Contest, (iv) Buyer will provide the Holder Representative copies of all material correspondence received from the applicable Tax Authority in connection with each Tax Contest and (v) Buyer shall not settle, concede or compromise any Tax Contest that could reasonably be expected to give rise to an indemnification obligation for the Shareholders pursuant to this Agreement without obtaining the prior written consent of the Holder Representative (which consent shall not be unreasonably withheld, conditioned or delayed). For avoidance of doubt, this Section 5.7 shall govern the notice and conduct of any Tax Contest and the notice and conduct provision or Article VIII with respect thereto shall not apply.

(h) Without the prior written consent of the Holder Representative, which consent shall not be unreasonably withheld conditioned or delayed, Buyer and its Affiliates (including, for the avoidance of doubt, the Company and its Subsidiaries after the Closing) shall not cause or permit the Company or any of its Subsidiaries: (i) to make or change any Tax election or accounting method with retroactive effect to a Tax period ending on or before the Closing Date or file, refile or amend any Tax Return with respect to a Pre-Closing Tax Period (except as provided in Section 5.7(e)); (ii) to enter into any voluntary disclosure agreement process (or similar voluntary process) or initiate discussions with any Tax Authority regarding Taxes for any Pre-Closing Tax Period; (iii) to surrender any right to claim a Tax refund or Tax credit with respect to any Pre-Closing Tax Period; (iv) to extend or waive any statute of limitations relating to any Tax or Tax Return with respect to any Pre-Closing Tax Period or (v) to file any ruling request with any Tax Authority relating to any Tax or Tax Return with respect to any Pre-Closing Tax Period.

(i) Buyer agrees to pay to the Holder Representative (for further distribution to the Shareholders, and as additional Purchase Price) an amount in cash equal to any refund of Taxes previously paid (including credits against Taxes otherwise due and owing that are received in lieu of any Tax refunds) by the Company or any of its Subsidiaries with respect to a Pre-Closing Tax Period plus any and all interest paid or credited with respect thereto, net of expenses and any additional Taxes imposed as a result of receipt of such refund or actual use of such credit. Upon reasonable request of the Holder Representative and at the expense of the Shareholders, Buyer agrees to, and agrees to cause its Affiliates (including, following the Closing Date, the Company) to, use reasonable efforts to obtain any such Tax refunds or credit, and to keep the Holder Representative reasonably informed on the efforts to obtain such Tax refunds or credits. If, and to the extent that, any overpayment of Taxes previously paid by the Company or any Subsidiary with respect to a Pre-Closing Tax Period (determined in accordance with Section 5.7(c) with respect to any Straddle Period) is used to reduce the Taxes in a taxable period (or portion thereof) following the Closing Date, then such overpayment of Taxes shall be considered “a credit against taxes otherwise due and owing that are received in lieu of any Tax refunds by the Company or any of its Subsidiaries with respect to a Pre-Closing Tax Period” for purposes of this Section 5.7(h).

(j) Transaction Deductions shall be allocated to, and taken into account and deducted in, taxable periods of the Company ending on the Closing Date for the benefit of the Shareholders to the extent permitted by Applicable Law at a “more likely than not” or higher level of confidence, and any Transaction Deductions for a Straddle Period shall be attributed to the portion of such Straddle Period ending on the Closing Date to the extent permitted by Applicable Law at a “more likely than not” or higher level of confidence. For purposes of the foregoing, the Parties agree to cause the Company to adopt the seventy percent (70%) safe harbor (and to include the applicable election statements with the appropriate Tax Returns) with respect to the deduction of any applicable “success-based fees” in accordance with IRS Revenue Procedure 2011-29 to the extent that the Transactions are properly treated as a “covered transaction” within the meaning of Treasury Regulations Section 1.263(a)-5.

(k) During the twelve months following the Closing Date, no Buyer Entity shall transfer any Shares purchased pursuant to this Agreement to (i) any Person domiciled outside the EU or (ii) otherwise considered foreign to the EU pursuant to Applicable Law.

5.8 Employees

(a) Following the Agreement Date and prior to the Closing Date, the Buyer or a Buyer Entity or the Company will offer employment packages to ~~certain of the Company's employees determined by the Buyer after consultation with the Company (such employees, excluding the Key Employees, the "Specified Employees" and collectively with the Key Employees, the "Offered Employees")~~ the Key Employees. The employment packages contingently offered to such ~~Specified~~Key Employees will be consistent with their seniority, as determined by the Buyer in its sole discretion. The Company and each of its Subsidiaries will use commercially reasonable efforts to ensure that all of the ~~Specified~~Key Employees become continuing employees of the Buyer, or remain as continuing employees of the Company or any of its Subsidiaries or any of their Affiliates, as applicable, by executing, delivering, remaining in compliance with, and taking no action to revoke, rescind, or repudiate ~~(i) an offer letter in substantially the form identified by the Buyer for such Person (collectively, the "Continuing Employee Offer Letters," and, together with the Key Employee Offer Letters, the "Offer Letters")~~¹⁷²³ and (ii) an NDA, with the effectiveness of all of such agreements conditioned upon the Closing, (such continuing employees, "*Continuing Employees*").

(b) [To the extent permitted by Applicable Law, the Company and each of its Subsidiaries will, and the Shareholders will cause the Company and each of its Subsidiaries to, terminate each Employee Benefit Plan, with such termination to be effective as of the day immediately prior to the Closing Date and reflected in resolutions of the board of directors of the Company, unless the Buyer provides written notice to the Company no later than three Business Days prior to the Closing Date that one or more of such Employee Benefit Plans will not be terminated or that the termination date shall be a date other than the day immediately prior to the Closing Date. Such resolutions will be subject to the prior review and approval of the Buyer, which will not be unreasonably withheld, conditioned, or delayed. The Company and each of its Subsidiaries also will, and the Shareholders will cause the Company or any of its Subsidiaries to, take such other actions in furtherance of terminating such Employee Benefit Plans as the Buyer may reasonably require.]¹⁸²⁴

5.9 Notification of Certain Matters

The Company will, and the Shareholders will cause the Company to, deliver prompt notice to the Buyer of (a) the occurrence or nonoccurrence of any event that would be reasonably likely to result in any of the conditions in Article VI not being satisfied and (b) any material failure by the Company or any of its Subsidiaries to comply with or satisfy any covenant, condition, or agreement to be complied with or satisfied by it pursuant to this Agreement. The delivery of any notice pursuant to this Section 5.9 will not limit or otherwise affect the remedies available to the Buyer in this Agreement.

¹⁷ ~~Note to Draft: Offer Letters to include RSU package referenced in Term Sheet.~~

²³ Note to Draft: Offer Letters to include RSU package referenced in Term Sheet.

¹⁸²⁴ Note to Draft: Subject to due diligence with respect to employee benefit plans.

5.10 Access to Information; Interim Period Cooperation

Until the earlier of the Closing and the termination of this Agreement in accordance with Article IX, the Company will, and the Shareholders will cause the Company or any of its Subsidiaries to, and the Company and each of its Subsidiaries will cause the Company Service Providers to, (a) afford the Representatives of any Buyer Entity access at all reasonable times to the Company Service Providers, properties, offices and other facilities, books, and records of the Company or any of its Subsidiaries, (b) furnish any Buyer Entity with all financial, operating, and other data and information as such Buyer Entity may reasonably request, and (c) subject to Applicable Law, use commercially reasonable efforts to facilitate the planning for the integration of the Company and each of its Subsidiaries' respective businesses with the business of any Buyer Entity following the Closing.

5.11 [Treatment of Company Grants and Subsidies

The Company or any of its Subsidiaries have received certain grants and subsidies, including from [●] and [●]. Prior to Closing, the Company and each of its Subsidiaries will, and the Shareholders will cause the Company or any of its Subsidiaries to, use commercially reasonable best efforts to obtain a waiver of any obligation to repay or return such grants or subsidies pursuant to which [●] and [●] irrevocably confirms that it will not claim repayment or return of the respective grants or subsidies as a result of (i) the acquisition by the Buyer of the Shares pursuant to this Agreement or (ii) any actions undertaken by the Company or any of its Subsidiaries or any of the Shareholders prior to the Closing. The Parties acknowledge and agree that if no such waiver, in each case in the form reasonably acceptable to the Buyer, is obtained on or prior to the Closing Date, the amounts of such grants and subsidies shall be treated as Debt for the purposes of this Agreement.]⁴⁹²⁵

5.12 Release of Claims

(a) Effective as of the Closing, each Shareholder, on such Shareholder's behalf and on behalf of any of such Shareholder's heirs, administrators, representatives, successors in interest or assigns and all other Persons that might allege a Claim through such Shareholder or on such Shareholder's behalf, hereby knowingly, fully, unconditionally, and irrevocably (i) acknowledges and agrees that such Shareholder has no rights or entitlements with respect to any Share, or any other equity interest in the Company except as set forth on the Initial Closing Consideration Spreadsheet, (ii) acknowledges and agrees that such Shareholder has no current or potential right, title, license, claim, or unassigned personal interest of any kind to any Company-Owned IP or, more generally, to any Company Intellectual Property Rights, and (iii) releases, effective as of immediately prior to the Closing, any and all Claims and causes of action (whether held directly, derivatively, or otherwise) that such Shareholder has or may have against the Company or any of its Subsidiaries or any present or former director, officer, manager, employee, or agent of the Company or any of its Subsidiaries, whether asserted or un-asserted, known or unknown, contingent or non-contingent, past or present, arising or resulting from or relating, directly or indirectly, to any act, omission, event or occurrence prior to the Closing relating to the Company

⁴⁹²⁵ Note to Draft: Subject to due diligence.

or any of its Subsidiaries, including with respect to any Shares, any other equity interests in the Company or any of its Subsidiaries, and/or any rights or interests therein (collectively, the “**Released Claims**”). Notwithstanding the foregoing, nothing in this Section 5.12 will be deemed to constitute release (x) by such Shareholder of any right of such Shareholder under this Agreement, or any other Operative Document, or (y) to the extent such Shareholder is a Company Service Provider, by such Shareholder of any right of such Shareholder to receive accrued but unpaid wages, salary, compensation, bonuses, accrued vacation and any other accrued but unpaid compensation and/or benefits (other than any equity-based compensation) owed to such Shareholder in his, her, or its capacity as a Company Service Provider or ex-Company Service Provider or any employment rights that cannot be waived as a matter of Applicable Law. Notwithstanding anything to the contrary contained this Agreement, each Shareholder on his, her, or its behalf and on behalf of any of his, her, or its heirs, administrators, representatives, successors in interest, or assigns and all Persons that might allege a Claim through such Shareholder or on such Shareholder’s behalf, hereby knowingly, fully, unconditionally, and irrevocably waives any Claim or right of recourse he, she, or it may have against the Company or any of its Subsidiaries with respect to the Company’s Breach of any of the representations and warranties set forth in Article II and the covenants of the Company set forth in Article V.

(b) Effective as of the Closing, each Shareholder hereby unconditionally and irrevocably releases, discharges, and waives any and all of such Shareholder’s rights under the articles of association, shareholders agreements or similar agreements (in each case, in the form in force as of the Agreement Date or at any prior or subsequent time) where the exercise of any such right would in any way prevent, conflict with, hinder, or be inconsistent with the execution and performance of this Agreement, or the consummation of the Transactions.

5.13 [Section 280G Matters]

(a) The Company shall obtain and deliver to Buyer, prior to soliciting the vote of the Shareholders with respect to the 280G Proposal, an executed parachute payment waiver, in substantially the form attached hereto as **Exhibit E** (the “**Parachute Payment Waiver**”) from each Person who is or reasonably could be, with respect to the Company or any of its Subsidiaries, a “disqualified individual” (within the meaning of Section 280G of the Code), as determined immediately prior to the initiation of the Shareholder solicitation required by this Section 5.13, and who reasonably might otherwise receive, have received, or have the right or entitlement to receive an excess parachute payment under Section 280G of the Code (which Persons are listed in Schedule 5.13(a) to the Disclosure Memorandum).

(b) The Company shall solicit the vote of the Shareholders in accordance with Section 280G(b)(5)(B) of the Code (the “**280G Proposal**”) so as to render, if an affirmative vote is obtained, the parachute payment provisions of Section 280G of the Code inapplicable to any and all payments and benefits provided pursuant to Contracts that, in the absence of the executed Parachute Payment Waivers by the affected Persons under Section 5.13(a), might otherwise reasonably result, individually or in the aggregate, in the payment of any amount or the provision of any benefit that would not be deductible by reason of Section 280G of the Code, with such Shareholder approval to be solicited in a manner that satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code, including Q-7 of Section 1.280G-1 of the Treasury

Regulations. The results of such vote shall be provided promptly to Buyer. The documentation constituting the 280G Proposal shall be subject to Buyer's prior review and approval.]²⁰²⁶

5.14 Excluded Asset Sale; Excluded Asset Cash Distribution. ²¹²⁷

Prior to the Closing, each Shareholder shall take all actions necessary to transfer the legal and beneficial ownership of those Subsidiaries listed, and the minority equity ownership interests held by the Company or any of its Subsidiaries in certain entities as described, in Schedule 5.14 of the Disclosure Memorandum (collectively, the "*Excluded Subsidiaries*") to the Shareholders (or to an Affiliate of the Shareholders formed for the purpose of such transfer) for cash consideration upon terms and conditions, and pursuant to Contracts and other appropriate transfer documents that are approved by Buyer (such transaction, the "*Excluded Asset Sale*"). Following the consummation of the Excluded Asset Sale, and prior to the Closing, each Shareholder shall cause the Company or any of its Subsidiaries to distribute the cash proceeds from the Excluded Asset Sale to the Shareholders upon terms approved by Buyer (the "*Excluded Asset Cash Distribution*").

ARTICLE VI

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE BUYER TO THE CLOSING

The obligations of the Buyer to perform and observe the covenants, agreements and conditions hereof to be performed and observed by the Buyer at, or in connection with, the Closing will be subject to the satisfaction (or waiver by the Buyer) of the following conditions:

6.1 Accuracy of Representations and Warranties

(a) The representations and warranties regarding the Company and of the Shareholders contained in this Agreement (including the applicable Exhibits or Schedules to the Disclosure Memorandum) and in the other Operative Documents (other than the Fundamental Representations and the representations and warranties contained in Section 2.6(b), which are addressed in Section 6.1(b)) (i) will have, if qualified as to materiality, been true and correct in all respects, and, if not so qualified, been true and correct in all material respects, when made and (ii) will be, if qualified as to materiality, true and correct in all respects, and, if not so qualified, true and correct in all material respects, as of the Closing Date as though made on the Closing Date, except to the extent that such representations and warranties speak as of an earlier date (in which case such representation and warranty will be so true and correct as of such earlier date).

(b) The Fundamental Representations and the representations and warranties contained in Section 2.6(b) will have been true and correct in all respects when made and will be true and

²⁰²⁶ Note to Draft: Subject to due diligence.

²¹ ~~Note to Draft: Subject to revision based on additional discussions between the parties and review of proposed documentation for transfer of out-of-scope subsidiaries and investments prior to the Closing and distribution of cash proceeds from transfer to Shareholders.~~

²⁷ Note to Draft: Subject to revision based on additional discussions between the parties and review of proposed documentation for transfer of out-of-scope subsidiaries and investments prior to the Closing and distribution of cash proceeds from transfer to Shareholders.

correct in all respects as of the Closing Date as though made on the Closing Date.

6.2 Performance of Agreements

The Company and each Shareholder will have performed in all material respects all obligations and agreements and complied with all covenants contained in this Agreement or any other Operative Document to be performed and complied with by them at or prior to the Closing.

6.3 Governmental Approvals and Consents

All transfers of Company Permits and all approvals of or notices to any Governmental Body the granting or delivery of which is necessary for the consummation of the Transactions, or for the continued operation of the Company, will have been obtained or made, as applicable.

6.4 Compliance with Laws

The consummation of the Transactions will be permitted by all Applicable Laws to which the Buyer, the Company, or any Shareholder is subject.

6.5 Legal Proceedings

No Order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition limiting or restricting the consummation of the Transactions or the Buyer's ownership, conduct, or operation of the Company's business following the Closing will be in effect, and no Governmental Body or other Person will have commenced or expressed a potential intention to commence any Legal Proceeding seeking any of the foregoing, challenging any of the Transactions or seeking the recovery of a material amount of damages.

6.6 Employment Arrangements

(a) (i) No less than 100% of the ~~Offered~~Key Employees will (i) have become Continuing Employees by executing, delivering to Buyer, remaining in compliance with, and taking no action to revoke, rescind, or repudiate, his or her Offer Letter and/or NDA, each of which will remain in full force and effect, and (ii) be able to commence employment with the Buyer, the Company or any of their Affiliates, as applicable, in accordance with his or her Offer Letter upon the Closing.

~~(b) — [No less than 100% of the Company's contractors and consultants as of the Agreement Date will (i) remain engaged by the Company, (ii) not have taken any action to revoke, rescind, or repudiate his, her, or its Contract for the engagement of services with the Company, and (iii) not have stated to the Buyer, the Company, or their Affiliates an intent to so revoke, rescind, or repudiate such Contract.]~~

(b) ~~(e)~~ [In the event that any employees of the Company have not executed an Offer Letter and NDA prior to the Closing, the Company will deliver to the Buyer (or a Buyer Entity), if requested by the Buyer reasonably in advance of the Closing, a separation agreement or similar document in a form reasonably satisfactory to the Buyer, including a release of claims in favor of

the Company and its Affiliates and an acknowledgement that all payments owed to such employee have been paid in full. Any payments made in connection with such separation agreement will be a Transaction Cost.]²²²⁸

6.7 Material Adverse Effect

Since the Agreement Date and through the Closing, the Company will not have experienced a Material Adverse Effect or an event or circumstance that ~~may~~would be reasonably likely to result in ~~or cause~~ a Material Adverse Effect.

6.8 Receipt of Closing Deliveries

(a) The Company will deliver to the Buyer, at or prior to the Closing:

(i) a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, in a form reasonably satisfactory to the Buyer, certifying that the conditions set forth in Sections 6.1, 6.2, 6.3, 6.5 and 6.7 have been satisfied;

(ii) (A) the Required Consents, which Required Consents will be reasonably satisfactory to the Buyer; (B) evidence reasonably satisfactory to the Buyer that each of the Required Contracts has been terminated or amended, in the Buyer's sole discretion, or will be terminated or amended, as applicable, without further action of any Person, at the Closing, which terminations and amendments will be reasonably satisfactory to the Buyer; (C) the Required Notices, which Required Notices will be reasonably satisfactory to the Buyer; and (D) evidence reasonably satisfactory to the Buyer that the Required Actions have been completed in a manner reasonably satisfactory to the Buyer;

(iii) the Final Closing Consideration Spreadsheet and the Final Adjustments Spreadsheet, in accordance with Sections 1.3.1 and 1.3.2, respectively;

(iv) the letters of resignation in accordance with Section 1.4(c)(iv);

(v) payoff letters or final
invoices, and related ancillary documentation, in customary form reasonably satisfactory to the Buyer (specifying effectiveness upon receipt of payment and providing releases, including releases of any applicable Encumbrances, reasonably satisfactory to the Buyer) with respect to all payments relating to any outstanding Debt and Unpaid Transaction Costs in amounts not greater than the amounts set forth in the Final Adjustments Spreadsheet, executed by each of the Persons to whom such amounts are owed as of the Closing;

(vi) evidence satisfactory to
the Buyer that the Excluded Asset Sale and the Excluded Asset Cash Distribution have been completed;

²²²⁸ Note to Draft: Subject to due diligence.

(vii) [written waiver from [●] and [●] confirming that [●] and [●] each irrevocably waive, in the form reasonably acceptable to the Buyer, any rights that they may have to require repayment or return of any grants or subsidies issued by [●] and [●] to the Company, as a result of (i) the acquisition by the Buyer of the Shares pursuant to this Agreement or (ii) any actions undertaken by the Company or any of the Shareholders prior to the Closing;]²³²⁹

(viii) written confirmation dated [●] from the Clerk's²³²⁹ office of the Enterprise Court of [●], confirming that the Company and each of the In Scope Subsidiaries have not been declared bankrupt or have not filed with the Enterprise Court of [●] a petition for its judicial reorganization on the basis of Book XX of the Code of Economic Law (“*Wetboek van economisch recht*” / “*Code de droit économique*”)

(ix) executed confirmatory assignments of Company IP from any of the Company's current and former Company Service Providers that have not executed a Company IP Protection Agreement, in each case in a form that is reasonably satisfactory to the Buyer.

(x) [a Parachute Payment Waiver, executed by each Person required to execute such a waiver pursuant to Section 6.9;]

(xi) a signed copy of the Restated and Amended Lease Agreement, in the form attached as ***Exhibit G***.

6.9 [Section 280G Matters]

Prior to the Closing, the Company shall have obtained valid Parachute Payment Waivers and solicited Shareholder votes (including at such time or times as requested by Buyer) in respect of the 280G Proposal, in each case, in accordance with Section 280G of the Code and applicable rulings and regulations thereunder and Section 5.13. As of the Closing, there shall be no payments or benefits payable to any “disqualified individual” of the Company (determined in accordance with Section 280G of the Code and the regulations and authorities promulgated thereunder) that the Company, subject to Buyer's reasonable approval, determines may constitute, individually or in the aggregate, “parachute payments” under Section 280G of the Code (including because such payments or benefits either (a) are exempt from the definition of “parachute payment” pursuant to valid Shareholder solicitation and approval of the 280G Proposal carried out in accordance in all applicable respects with Section 5.15 and Section 280G of the Code and applicable rulings and regulations thereunder or (b) are no longer payable pursuant to (i) valid and irrevocable Parachute Payment Waivers of such payments by such disqualified individuals (which waivers remain in effect as of immediately prior to the Closing) made in accordance in all applicable respects with Section 5.15 and Section 280G of the Code and applicable rulings and regulations thereunder and (ii) a failure to

obtain a valid Shareholder approval of the 280G Proposal).]²⁴³⁰

ARTICLE VII CONDITIONS PRECEDENT TO OBLIGATIONS OF THE COMPANY AND THE SHAREHOLDERS TO THE CLOSING

The obligations of each of the Company and the Shareholders to perform and observe the covenants, agreements, and conditions hereof to be performed and observed by it at, or in connection with, the Closing will be subject to the satisfaction (or waiver by the Company and the Holder Representative) of the following conditions:

7.1 Accuracy of Representations and Warranties

The representations and warranties of the Buyer contained in this Agreement and in the other Operative Documents will have been true and correct when made and will be true and correct as of the Closing Date as though made on the Closing Date.

7.2 Performance of Agreements

The Buyer will have performed in all material respects all obligations and agreements and complied with all covenants contained in this Agreement or any other Operative Document to be performed and complied with by it at or prior to the Closing.

7.3 Compliance with Laws

The consummation of the Transactions will be permitted by Applicable Law to which the Buyer, or the Company, or any Shareholder is subject.

7.4 Receipt of Closing Deliveries

(a) The Buyer will deliver to the Company, at or prior to the Closing:

(i) a certificate, dated as of the Closing Date, executed on behalf of the Buyer by a duly authorized officer of the Buyer, certifying that the conditions set forth in Sections 7.1 and 7.2 have been satisfied.

(ii) executed Continuing Employee Offer Letters in accordance with Section 5.8(a).

(iii) cash in an amount equal to the Purchase Price by wire transfer in immediately available funds, to an account or accounts designated at least two Business Days prior to the Closing Date by the Shareholders in a written notice to Buyer.

²⁴³⁰ Note to Draft: Subject to due diligence.

ARTICLE VIII SURVIVAL AND INDEMNIFICATION

8.1 Survival of Representations, Warranties, and Covenants

The representations and warranties of the Shareholders contained in this Agreement or any other Operative Document or in any certificate delivered pursuant hereto will survive until 11:59 PM Pacific Time on the date that is twenty-four (24) months after the Closing Date, as adjusted pursuant to Section 8.6(b), except that any Indemnification Claim based on (a) Fraud or gross negligence will survive the Closing indefinitely, (b) any Breach of the Fundamental Representations will survive the Closing for a period of 20 years, (c) any Breach of the representations and warranties in Section 2.15 (the “***Tax Representations***”) will survive the Closing for the statute of limitations applicable to such matters plus 90 days, and (d) any Breach of the representations and warranties in Section 2.9 ~~or 2.10~~ (the “***Employment and IP Representations***”) will survive the Closing for a period of six years after the Closing Date. The Tax Representations and the Employment ~~and IP~~ Representations are collectively referred to as the “***Special Representations***”. The covenants and agreements contained in this Agreement or in any other Operative Documents will survive until performed in accordance with their terms, but no right to indemnification pursuant to this Article VIII in respect of any Indemnification Claim based upon any Breach of a covenant or agreement will be affected by the expiration of such covenant or agreement. ~~If the Transactions are consummated, the representations and warranties of the Buyer contained in this Agreement or any other Operative Document or in any certificate delivered pursuant to Section 7.4 will expire and be of no further force or effect as of the Closing.~~ The applicable survival period pursuant to this Section 8.1 is referred to as the “***Survival Period***.”

8.2 Indemnification by the Shareholders

(a) Subject to the limitations set forth in this Article VIII, the Shareholders will, jointly and severally, indemnify, defend, and hold the Buyer and its officers, directors, employees, agents, and Affiliates (each, an “***Indemnified Party***”) harmless from and against, and will reimburse the Indemnified Parties for, any and all losses, damages, Liabilities, Orders, claims, settlement payments, fines, penalties, Taxes, costs, and expenses (including legal and accounting fees and expenses), whether absolute, accrued, conditional, or otherwise, and whether or not involving a Third-Party Claim (collectively, “***Losses***”), directly or indirectly, arising out of, resulting from, or in connection with:

(i) any Breach of any representation, warranty, or certification set forth in Article II, or elsewhere in this Agreement regarding the Company, together with the Disclosure Memorandum, or in any other Operative Document regarding the Company (A) as of the Agreement Date (except to the extent that such representations, warranties, and certifications that speak as of an earlier date, in which case such representations, warranties, and certifications will be true and correct as of such earlier date) or (B) as of the Closing Date as though such representation, warranty, or certification were made as of the Closing Date (except to the extent that such representations, warranties, and certifications speak as of an earlier date, in which case such representations, warranties, and certifications will be true and correct as of such earlier date);

(ii) any Breach prior to the Closing by the Company of any covenant or other obligation in this Agreement or in any other Operative Document (including where the Shareholders have caused the Company to breach any covenant or other obligation contained in this Agreement or in any other Operative Document);

(iii) any and all Pre-Closing Taxes, other than any such Taxes ~~properly and specifically accounted for~~included in the calculation of Closing Debt or Unpaid Transaction Costs ~~and, in each case, that are identified on the Final Adjustments Spreadsheet and are deducted from the Purchase Price in the calculation of the Adjusted Purchase Price;~~

(iv) any Transaction Costs of the Company and any Debt outstanding, in each case, as of ~~the~~ immediately prior to the Closing, other than the Unpaid Transaction Costs and Closing Debt that are identified on the Final Adjustments Spreadsheet and deducted from the Purchase Price in the calculation of the Adjusted Purchase Price;

(v) any inaccuracy in the Final Closing Consideration Spreadsheet;

(vi) any Claims by any former holder (or purported holder) of any equity interests of the Company (including any predecessors), arising out of, resulting from or in connection with the allocation of the Adjusted Purchase Price or any portion thereof that differs from that specified on the Final Closing Consideration Spreadsheet;

~~(vii) any matter set forth in Schedule 2.12(a) to the Disclosure Memorandum or that is or would be a Breach of any of the representations and warranties made in Section 2.12(a);~~

(vii) ~~(viii)~~ any business conducted by, or any of the operations of, the Excluded Subsidiaries, whether prior to, on or after the Closing Date or otherwise related to any of the assets, Liabilities, Contracts, employees, contractors, customers or vendors of the Excluded Subsidiaries, or any business conducted by the Company or any of the ~~In-~~Scope Subsidiaries at any time prior to the Closing other than the Business ~~as conducted as of the Closing Date;~~

~~(ix) any Fraud or gross negligence, by or on behalf of any Shareholder, the Company, or any Company Service Provider;~~

(viii) ~~(x)~~ any Released Claims;

(ix) ~~(xi)~~ any Transaction Litigation; or

(x) ~~(xii)~~ [●]²⁵³¹.

(b) Subject to the limitations set forth in this Article VIII, each Shareholder will~~f~~, severally and not jointly,~~f~~ indemnify, defend, and hold the Indemnified Parties harmless from and

²⁵³¹ Note to Draft: Subject to due diligence.

against, and will reimburse the Indemnified Parties for, any and all Losses, directly or indirectly, arising out of, resulting from, or in connection with:

(i) any Breach of any representation or warranty made by such Shareholder contained in this Agreement (other than those set forth in Article II) (A) as of the Agreement Date or (B) as of the Closing Date as though such representation and warranty were made as of the Closing Date;

(ii) any Breach of any representation, warranty, or certification made by such Shareholder in this Agreement or other Operative Document;

(iii) any Breach by such Shareholder of any covenant or other obligation contained in this Agreement or in any other Operative Document (including where the Shareholders have caused the Company to breach any covenant or other obligation contained in this Agreement or in any other Operative Document);

(iv) any Released Claims of such Shareholder; or

(v) any Fraud or gross negligence by or on behalf of such Shareholder or any Fraud or gross negligence by or on behalf of the Company of which such Shareholder has knowledge.

The Indemnified Parties will have the option of seeking satisfaction for any indemnification obligations of such Shareholder pursuant to this Section 8.2 out of such Shareholder's Pro Rata Share of the Indemnification Holdback Fund.

8.3 Limitations and Adjustments

(a) Except for Losses arising out of, resulting from, or in connection with Fraud, gross negligence, or any Breach of the Fundamental Representations or the Special Representations, the aggregate liability of the Shareholders for any Indemnification Claim pursuant to Section 8.2(a)(i) will be limited to the Indemnification Holdback Fund.

(b) Subject to Section 8.3(a), the aggregate liability of the Shareholders for any Indemnification Claim pursuant to Section 8.2(a) will be limited to the Adjusted Purchase Price (inclusive of the Indemnification Holdback Amount).

(c) The Shareholders shall not be liable to any Indemnified Party for indemnification under Section 8.2(a)(i) until the aggregate amount of all Losses in respect of indemnification under Section 8.2(a)(i) (other than Losses arising out of, resulting from, or in connection with Fraud, gross negligence, or any Breach of the Fundamental Representations or Special Representations) exceeds an amount equal to 0.5% of the Purchase Price (the "**Basket**"), in which event the Shareholders shall only be required to pay or liable for Losses in excess of the Basket. Notwithstanding anything to the contrary in this Agreement, no Indemnified Party will be entitled to make an Indemnification Claim for any single or series of directly related Losses arising out of, resulting from or in connection with the matters listed in Section 8.2(a)(i) (other than Losses arising out of, resulting from, or in connection with Fraud, gross negligence, or any Breach of the

Fundamental Representations or Special Representations) ~~unless and until a Claim Notice (together with any other delivered Claim Notice) describing Losses in an aggregate amount greater~~less than ~~\$50,000~~€10,000 (the “De Minimis Basket”) ~~is delivered, in which case the Indemnified Party may make an Indemnification Claim and receive cash from the Indemnification Holdback Fund for all Losses (including the amount of the Basket).~~ The Basket and De Minimis Basket shall not apply to any other Losses or Indemnification Claims therefor.

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

(e) Payments by a Shareholder pursuant to Section 8.2 in respect of any Losses shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received by the Indemnified Party (or the Company) in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(f) The Parties acknowledge and agree that the calculation of the amount of any Losses (for purposes of determining the amount of an indemnification obligation under this Article VIII) shall be reduced by any actual reduction of Taxes paid by an Indemnified Party (or any Affiliate thereof, including, for the avoidance of doubt, any affiliated, consolidated, combined or unitary group of which an Indemnified Party is a member), determined on a “with and without” basis, with respect to the taxable year of the occurrence of the Loss giving rise to the indemnification obligation or the subsequent taxable year; provided, that if any such Tax reduction is so realized after an indemnification payment is made but within the subsequent taxable year, such Indemnified Party shall, within fifteen (15) Business Days of such realization of such Tax reduction, pay (on its behalf or on behalf of such Affiliate, as applicable) to the Holder Representative (for further distribution to the Shareholders) an amount in cash equal to such Tax reduction (net of any reasonable costs and expenses incurred).

(g) ~~(d)~~ The obligations of the Shareholders under Section 8.2 will be satisfied, first, from the Indemnification Holdback Fund. If the full amount of the Indemnification Holdback Fund is retained by the Buyer in satisfaction of Indemnification Claims, any additional liability of the Shareholders under Section 8.2 will be satisfied from other assets of the Shareholders, including by offset of amounts not yet paid by a Buyer Entity under this Agreement or any other Operative Document. No Claim for contribution or other Claim will be made by the Shareholders against the Company or any other Buyer Entity for Losses for which an Indemnified Party makes an Indemnification Claim.

(h) ~~(e)~~ Notwithstanding anything to the contrary in this Agreement, the amounts that an Indemnified Party recovers from the Indemnification Holdback Fund pursuant to (i) Indemnification Claims for Breaches of Fundamental Representations or Special Representations, or (ii) any other Indemnification Claim that is not made pursuant to Section 8.2(a)(i) (collectively,

Indemnification Claims contemplated by clauses (i) and (ii), “*Specified Claims*”) will not reduce the amount that an Indemnified Party may recover with respect to Indemnification Claims that are not Specified Claims. By way of illustration and not limitation, assuming there are no other Indemnification Claims for indemnification, compensation, or reimbursement, in the event that Losses resulting from a Specified Claim are first satisfied from the Indemnification Holdback Fund and such recovery fully depletes the Indemnification Holdback Fund, the maximum amount recoverable by an Indemnified Party pursuant to a subsequent claim that is not a Specified Claim will continue to be the full Indemnification Holdback Amount irrespective of the fact that the Indemnification Holdback Fund was used to satisfy such Specified Claim, such that the amount recoverable for such two Indemnification Claims would be the same regardless of the chronological order in which they were made.

(i) ~~(h)~~ For purposes of determining whether a Breach has occurred and the amount of Losses under Section 8.2, all qualifications and limitations as to materiality, Material Adverse Effect, and words of similar import will be disregarded.

(j) ~~(g)~~ The representations and warranties of the Shareholders contained in this Agreement, any other Operative Document, or in any certificate delivered pursuant this Agreement will not be deemed waived, modified, or otherwise affected, nor will the survival of any such representations and warranties be deemed reduced, truncated, or otherwise limited, by any investigation made or any knowledge possessed or acquired by the Buyer or any of its Affiliates or any of their respective directors, officers, employees, consultants, or agents (or that could have been discovered by any of the foregoing, whether by any investigation made by or on behalf of the Buyer or any of its Affiliates into the affairs of the Company or otherwise) prior to the Closing with respect to (i) the truth and accuracy of any such representations and warranties or (ii) any facts, matters, or circumstances that may give rise to an Indemnification Claim, and no Indemnification Claim made pursuant to this Agreement will be limited on the basis thereof.

(k) ~~(h)~~ The amount of Losses related to any Indemnification Claim will be paid to the applicable Indemnified Party in full, without any set off, counterclaim, restriction, or condition and without any deduction or withholding (except as may be required by Applicable Law or as otherwise agreed).

~~(i) For purposes of determining whether there has been a Breach of a representation or warranty in Section 2.9, Section 2.15, or any other representation or warranty with respect to Taxes and the amount of any Losses arising therefrom, disclosures made in the Disclosure Memorandum will be disregarded.~~

(l) ~~(j)~~ If an Indemnification Claim may be properly characterized in multiple ways in accordance with this Article VIII such that such Indemnification Claim may or may not be subject to different limitations depending on such characterization, then the Indemnified Party will have the right to characterize such Indemnification Claim in a manner that maximizes the recovery and time to assert such Indemnification Claim permitted in accordance with this Article VIII.

(m) No Shareholder shall have any liability under this Agreement, including under this Article VIII, with respect to any Taxes (or any Losses directly or indirectly, arising out of, resulting

from, or in connection with such Taxes): (i) resulting from any transaction or event taken at the direction of Buyer or any of its Affiliates on the Closing Date after the Closing not specifically contemplated by this Agreement; (ii) with respect to any taxable period (or portion thereof) beginning after the Closing Date, except with respect to any breach of the representation and warranties made in Sections 2.15(d), (e) and (f); or (iii) due to the unavailability or reduction, in any taxable period (or portion thereof) beginning after the Closing Date, of any net operating loss, net operating loss carryforward, capital loss, capital loss carryforward, Tax credit, Tax credit carryforward, disallowed interest expense carryforward, Tax basis or other Tax attribute of the Company from a taxable period (or portion thereof) ending on or before the Closing Date.

8.4 Procedure for Indemnification

(a) Except as otherwise set forth in Section 8.6(b) or this Section 8.4, the period during which Indemnification Claims may be made pursuant to clauses (i) and (ii) of Section 8.2(a) and clauses (i) and (ii) of Section 8.2(b) will be the Survival Period applicable to such Indemnification Claim.

(b) An Indemnified Party will give written notice (a “*Claim Notice*”) of any Indemnification Claim by or on behalf of any Indemnified Party to the Holder Representative, reasonably promptly, but in any event if such Indemnification Claim relates to the assertion against an Indemnified Party of any Third-Party Claim (other than with respect to a Tax Contest), within 30 Business Days after receipt by such Indemnified Party of written notice of a Legal Proceeding relating to such Third-Party Claim, except that the failure to so notify the Holder Representative within such time period will not relieve the Shareholders of any obligation or liability to the Indemnified Party, except to the extent that the Holder Representative demonstrates that its ability to resolve such Indemnification Claim is materially and adversely affected thereby.

(c) Unless the Holder Representative contests the Indemnification Claim in writing delivered to the Indemnified Party within 15 Business Days after receipt of a Claim Notice and describing in reasonable detail the basis for contesting the Indemnification Claim, the Indemnified Party will, subject to the other terms of this Article VIII, be paid the amount of Losses related to such Indemnification Claim or the uncontested portion thereof within three Business Days following such 15th Business Day. Any disputed Indemnification Claims will be resolved either (i) in a written agreement signed by the Buyer and the Holder Representative, or (ii) by the final, non-appealable decision of a court resolving such disputed Indemnification Claim, and the Indemnified Party shall be paid the amount of Losses related to such Indemnification Claim within three Business Days following such resolution.

8.5 Third-Party Claims

(a) In the event that the Buyer or its Affiliates become aware of a Third-Party Claim (other than with respect to a Tax Contest) that Buyer or its Affiliates in good faith believes may result in a claim for Losses by or on behalf of an Indemnified Party, the Buyer or its Affiliates ~~will have the right in their sole discretion to determine and conduct the defense of and to settle or~~

~~otherwise resolve such Third-Party Claim, including paying and/or agreeing to pay, in settlement or resolution of such claim, any amounts to the third party making such claim (such amounts, “Settlement Payments”). The costs and expenses incurred shall give the Shareholders prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Shareholders of their indemnification obligations, except and only to the extent that the Buyer or its Affiliates forfeits any of its material rights or defenses by reason of such failure. Such notice by the Company, the Buyer or its Affiliates shall describe the Third-Party Claim in connection with defense, enforcement, settlement, or resolution (including reasonable attorneys’ fees, other professionals’ and experts’ fees, and court or arbitration costs) (collectively, “Defense Costs” which, for the avoidance of doubt, do not include a Settlement Payment itself), shall constitute Losses for which reasonable detail, shall include copies of all material written evidence thereof and, if reasonably practicable, shall indicate the non-binding estimated amount of the Losses that have been or may be sustained by the Indemnified Parties Party. The Shareholders shall be indemnified to have the extent an indemnification claim therefore is made under this Article VIII whether or not it is ultimately determined that such third-party claim is itself indemnifiable under Section 8.2, and neither the Holder Representative nor any Shareholder shall have any power or authority to object to recovery by or on behalf of any Indemnified Party (against the Indemnification Holdback Fund or otherwise) for any Losses claimed with respect to such Defense costs. The Holder Representative will have the right to receive copies of all pleadings, notices, and communications with respect to such right to participate in or, by giving written notice to the Indemnified Party within thirty (30) days of the receipt of notice of Third-Party Claim to, assume the extent that receipt of such documents does not affect any privilege relating to defense of any Third-Party Claim at the Shareholders’ expense and by the Shareholders’ own counsel; provided, that the Shareholders shall not be entitled to assume or continue control of the defense of any Third-Party Claim if (i) the Third-Party Claim relates to or arises in connection with any potentially criminal conduct, (ii) the Third-Party Claim seeks an injunction or equitable relief against any Indemnified Party, subject to execution by the Holder Representative of the Buyer’s or its Affiliate (and, if required, such third party’s) standard non-disclosure agreement to the extent that such materials contain confidential or proprietary information, except that, in the case of a Tax Contest, the Holder Representative will only have the right to receive copies of any written correspondence from a Tax Authority and the failure to provide any such copies will not relieve any Shareholder of any obligation or liability to the Indemnified Party, except to the extent that the Holder Representative demonstrates that it or any such Shareholder is materially and adversely affected thereby. Unless otherwise consented to in writing in advance by the Buyer or its Affiliates in their sole discretion, (iii) the Third-Party Claim relates to the Indemnified Party’s material customers, suppliers, vendors or other material service providers, or (iv) the Third-Party Claim is an insured event under any policy of insurance then maintained by the Indemnified Party. In the event that the Shareholders are permitted to and assume the defense of any Third-Party Claim, the Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it subject to the Shareholders’ right to control the defense thereof. The Indemnified Party and the Shareholders shall cooperate in the Holder Representative and its Affiliates may not participate in any Third-Party Claim or any action related conduct of the defense of a Third-Party Claim, including by retaining records and information that are reasonably relevant to such Third-Party Claim (including any discussions or negotiations in connection with the settlement, adjustment or compromise thereof). In the event~~

~~the Buyer determines to settle or resolve~~ and providing reasonable access to each other's relevant business records, other documents and employees. The Indemnified Party and the Shareholders shall use commercially reasonable efforts to avoid production of confidential information (consistent with Applicable Law), and to cause all communications among employees, counsel and others representing any ~~such third-party claim and make a Settlement Payment in connection therewith, the Buyer will seek~~ to a Third-Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges.

(b) Notwithstanding any other provision of this Agreement, the Shareholders shall not enter into settlement of any Third-Party Claim without the prior written consent ~~that of the Holder Representative to such Settlement Payment. If the Holder Representative (i) has consented to such Settlement Payment, or (ii) Indemnified Party (which consent shall not be~~ unreasonably withholds, conditions or delays giving such consent to such Settlement Payment (provided that such consent shall be deemed to have been given unless the Holder Representative will have objected within 20 days after a written request for such consent by ~~conditioned, withheld or delayed~~), except as provided in this Section 8.5(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 Buyer), ~~then part of the existence and amount of Losses with respect to such Settlement Payment shall be determinative and binding upon the Shareholders and neither the Holder Representative nor any Shareholder will have any power or authority to object to recovery by or on behalf of any Indemnified Party (against the Indemnification Holdback Fund or otherwise) for any Losses claimed with respect~~ Indemnified Party, each Indemnified Party has been fully and irrevocably reimbursed by or on behalf of the Shareholders for all Losses relating to or arising out of such Third-Party Claim and provides for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim, the Shareholders may settle the Third Party Claim upon the terms set forth in such firm offer to settle such ~~Settlement Payment~~ Third-Party Claim. If the ~~Holder Representative has~~ Indemnified Party has assumed the defense pursuant to Section 8.5(a), it shall not ~~consented~~ agree to such Settlement Payment and such any settlement without the written consent ~~was of the Shareholders (which consent shall not either (i) be~~ unreasonably ~~withheld, conditioned, withheld or delayed, or (ii) deemed given for failure to object within 20 days after a written request therefor, then the existence and amount of Losses with respect to such Settlement Payment shall be determined in the manner applicable to indemnification claims made pursuant to this Article VIII).~~

8.6 Holder Representative

(a) By executing this Agreement, each Shareholder will have irrevocably (except as set forth in Section 8.6(b)) authorized and appointed [●]²⁶³² (together with any replacement representative appointed pursuant to Section 8.6(b)) as the Holder Representative, with full power of substitution, as such Shareholder's representative and attorney-in-fact and agent to act for such Shareholder with respect to all matters arising in connection with this Agreement and the Operative Documents (other than such Shareholder's Offer Letter and NDA, if any), including full power and authority, exercisable in the sole discretion of the Holder Representative, to: (i) take any action contemplated to be taken by the Shareholders under this Agreement or any other Operative

²⁶³² Note to Draft: Shareholders to advise.

Document, (ii) negotiate, determine, defend, and settle any disputes that may arise under or in connection with this Agreement or any other Operative Document, and (iii) make, execute, acknowledge, and deliver any releases, assurances, receipts, requests, instructions, notices, agreements, certificates, and any other instruments, and generally do any and all things and take any and all actions that the Holder Representative may deem necessary or advisable in connection with this Agreement or any other Operative Document.

(b) The Holder Representative may be removed by written agreement among the Buyer and Shareholders representing a majority in interest of the Shareholders calculated with reference to each Shareholder's Pro Rata Share. The Holder Representative may resign at any time upon giving 45 Business Days' prior written notice of such resignation to the Buyer and each Shareholder but will exercise all the powers enumerated in Section 8.6(a) until the effective date of such resignation. In the event of such removal or resignation, or upon the death or disability of, the Holder Representative, the Buyer and Shareholders representing a majority in interest of the Shareholders calculated with reference to each Shareholder's Pro Rata Share will promptly agree upon a replacement Holder Representative. Any Survival Period set forth in Section 8.1 and any period in which any Indemnified Party is required to provide notice to the Holder Representative with respect to any Indemnification Claim or action to be taken in connection with this Agreement will be deemed to be extended by the number of calendar days that elapses between the Holder Representative's resignation, removal, death, or disability and the appointment of a replacement Holder Representative pursuant to the preceding sentence.

8.7 Adjustment to Adjusted Purchase Price

All payments made by a Shareholder to an Indemnified Party in respect of any Indemnification Claim will be treated as adjustments to the Adjusted Purchase Price for Tax purposes.

8.8 Payment

If uncontested, or once resolved either by agreement or receipt of an Order of a court of competent jurisdiction in accordance with Section 10.6, the amount of Losses (subject to the limitations set forth in Section 8.3) related to any Indemnification Claim will be paid to the respective Indemnified Party by the Shareholder by wire transfer of immediately available funds within three Business Days.

ARTICLE IX TERMINATION

9.1 Termination

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

- (a) by the written consent of the Buyer and the Company;
- (b) by the Buyer or the Company if the Closing has not occurred on or before the date

that is [●]²⁷³³ months after the Agreement Date, except that if either the Buyer, on the one hand, or the Company or any Shareholder, on the other hand, is then in Breach of this Agreement or any Operative Document, and such Breach will have been the cause of the failure of the Closing to occur by such date, then the Buyer, in the case of such a Breach by Buyer, or the Company, in the case of such a Breach by the Company or any Shareholder, may not terminate this Agreement pursuant to this Section 9.1(b);

(c) by the Buyer, if the Buyer concludes that any of the conditions in Article IV is or becomes impossible to satisfy (other than solely as a result of any Breach of this Agreement by the Buyer);

(d) by the Buyer, in the event of a Breach by the Company or any Shareholder of any representation, warranty, covenant, or agreement contained in this Agreement or in any Operative Document that has not been cured or is not curable by the Company or such Shareholder within 15 days after the Buyer delivers notice to the Company regarding such Breach; or

(e) by the ~~Company~~Shareholders, in the event of a Breach by the Buyer of any representation, warranty, covenant, or agreement contained in this Agreement or in any Operative Document that has not been cured or is not curable by the Buyer within 15 days after the Company delivers notice to the Buyer regarding such Breach.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, written notice thereof will forthwith be given by the terminating party to the other Parties, and this Agreement will thereupon terminate and become void and have no further force or effect, and the Transactions will be abandoned without further action by the Parties hereto. Notwithstanding anything to the contrary in this Agreement, this Section 9.2 and Article IX will survive indefinitely, and nothing in this Agreement will relieve any party hereto of any Liability for Fraud, gross negligence, or any willful Breach of this Agreement occurring prior to such termination.

ARTICLE X GENERAL

10.1 Expenses

Except as otherwise set forth in this Agreement, whether or not the Transactions are consummated, each party will pay its own Transaction Costs.

10.2 Notices

Any notice, request, or demand desired or required to be given pursuant to this Agreement will be in writing and will be given by personal delivery, confirmed ~~faesimile~~email transmission, or overnight courier service, in each case addressed as respectively set forth below or to such other address as any party will have previously designated by such a notice. The effective date of any

²⁷³³ Note to Draft: Outside date to be included following Buyer's completion of due diligence.

notice, request, or demand will be the date of personal delivery, the date on which successful facsimile transmission is confirmed, or one day after it is delivered to a reputable overnight courier service, as the case may be, in each case properly addressed as provided in this Agreement and with all charges prepaid. Notice given to the Holder Representative will constitute notice given to each Shareholder.

TO THE BUYER:

[BUYER]
[_____]
[_____]
Fax: [_____]
Attention: [_____]

**TO THE COMPANY (PRIOR
TO THE CLOSING DATE):**

[COMPANY]
[_____]
[_____]
Fax: [_____]
Attention: [_____]

**TO THE HOLDER
REPRESENTATIVE:**

[HOLDER
REPRESENTATIVE]
[_____]
[_____]
Fax: [_____]
Attention: [_____]

with a copy to:

[_____]
[_____]
[_____]
Fax: [_____]
Attention: [_____]

with a copy to:

[_____]
[_____]
[_____]
Fax: [_____]
Attention: [_____]

with a copy to:

[_____]
[_____]
[_____]
Fax: [_____]
Attention: [_____]

10.3 Severability

If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties to the fullest extent possible.

10.4 Entire Agreement

This Agreement (including the Disclosure Memorandum and all other Exhibits and Schedules hereto), the other Operative Documents, and the Confidentiality Agreement constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede all prior (but not concurrent) agreements and undertakings, both written and oral, among the Parties, or any of them, with respect to the subject matter hereof and thereof, except that nothing in this Agreement will supersede any provision of any Offer Letter, NDA, or other employment

agreement between any Buyer Entity and any Shareholder.

10.5 Assignment; Parties in Interest

This Agreement will not be assigned by operation of law or otherwise, and any such assignment will be null and void, except that any or all rights and obligations of the Buyer may be assigned to one or more Buyer Entities, so long as such assignment does not relieve the Buyer of any of its obligations in this Agreement. Subject to the foregoing, this Agreement will be binding on and inure solely to the benefit of the Parties hereto and their respective successors, heirs, legal representatives and permitted assigns, and nothing contemplated in this Agreement, express or implied, is intended to or will confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement (except that Article VIII is intended to benefit the Indemnified Parties).

10.6 Governing Law, Arbitration

(a) This Agreement will be governed by, and construed in accordance with, the laws of Delaware without giving effect to any choice or conflict of law, provision, or rule that would cause the application of laws of any other jurisdiction.

(b) All disputes arising out of or in connection with this Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the “**Rules**”) by three arbitrators appointed in accordance with the Rules. The seat of the arbitration will be London, England. Without intent to deviate from the provisions of the Rules, before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the Parties may apply to any competent judicial authority for interim or conservatory measures, including the courts of [●]. The language of the arbitration will be English. The Parties agree that each Party will pay its own costs and expenses (including counsel fees) of any such arbitration, and each Party waives its right to seek an order compelling the other Party to pay its portion of its costs and expenses (including counsel fees) for any arbitration. The Parties agree that the fees and expenses of the arbitrators and the administering authority, if any, will be paid in equal proportion by the Parties.

10.7 Headings; Construction

The table of contents and headings contained in this Agreement are included for convenience of reference only and will not affect in any way the meaning or interpretation of this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or non-U.S. statute or Applicable Law will be deemed also to refer to all amendments and rules and regulations promulgated thereunder, unless the context requires otherwise. For purposes of Article II, any reference to the “Company” will include any predecessor entity. The word “including” will mean including without limitation. The word “or” is disjunctive, but not necessarily exclusive. The words “hereof,” “herein,”

“hereunder,” and similar terms in this Agreement refer to this Agreement as a whole, including exhibits and schedules hereto, and not to any particular provision of this Agreement. When a reference is made in this Agreement to Annexes, Articles, Exhibits, Sections, or Schedules, such reference will be to an Annex, Article, Exhibit, Section, or Schedule to this Agreement unless otherwise indicated. For purposes of Article II, the words “provide,” “deliver,” “made available,” “furnish,” and similar terms used in this Agreement will mean provide in that certain virtual data room titled [“TARGET DILIGENCE”] on [box.com] at least two Business Days prior to the Agreement Date and not removed from such virtual data room prior to the Closing Date. Pronouns in the masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. If any Party has Breached any representation, warranty, or covenant contained in this Agreement in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the party has not Breached will not detract from or mitigate the fact that the Party is in Breach of the first representation, warranty, or covenant. All accounting terms used in this Agreement and not expressly defined in this Agreement will, except as otherwise noted, have the meanings assigned to such terms in accordance with GAAP. References to clauses without a cross-reference to a Section or subsection are references to clauses with the same Section or, if more specific, subsection. The symbol “\$” refers to United States Dollars. All references to “days” will be to calendar days unless otherwise indicated as a “Business Day.” Any action otherwise required to be taken on a day that is not a Business Day will instead be taken on the next succeeding Business Day, and if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day. Unless indicated otherwise, all mathematical calculations contemplated by this Agreement will be rounded to the tenth decimal place, except in respect of payments, which will be rounded to the nearest whole United States cent.

10.8 Counterparts

This Agreement may be executed and delivered in one or more counterparts, either manually or electronically (including by PDF and electronic mail), each of which will be deemed to be an original but all of which together will constitute one and the same agreement. No counterpart will be effective unless and until each party has executed at least one counterpart.

10.9 Remedies

Each of the Company, each Shareholder and the Holder Representative acknowledges and agrees that the Buyer would be damaged irreparably if any provision of this Agreement is not performed in accordance with its specific terms or otherwise is Breached. Accordingly, each such party agrees that the Buyer will be entitled to an injunction to prevent Breaches of any provision of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof, in addition to any other remedy available at law or in equity.

10.10 Amendment

This Agreement may be amended, modified, or supplemented at any time, but only pursuant to an instrument in writing signed by the Buyer and (a) prior to the Closing, the Company,

or (b) following the Closing, the Holder Representative, and any such amendment will be binding on all Parties hereto.

10.11 Waiver

The Buyer may (a) extend the time for the performance of any obligation of the Company, any Shareholder, or the Holder Representative under this Agreement or any other Operative Document, (b) waive any inaccuracy in the representations and warranties of the Company or any Shareholder contained in this Agreement or any other Operative Document (which waiver will not in any manner affect the rights of the Indemnified Parties under Article VII), or (c) waive compliance by the Company, any Shareholder, or the Holder Representative with any agreement or condition contained in this Agreement or any other Operative Document (which waiver will not in any manner affect the rights of the Indemnified Parties under Article VIII). The Holder Representative (and, prior to the Closing, the Company) may (i) extend the time for the performance of any obligation of the Buyer under this Agreement or any other Operative Document, (ii) waive any inaccuracy in the representations and warranties of the Buyer contained in this Agreement or any other Operative Document, or (iii) waive compliance by the Buyer with any agreement or condition contained in this Agreement or any other Operative Document. Any extension or waiver contemplated in this Section 10.11 will be valid only if set forth in an instrument in writing signed by the Buyer or the Holder Representative (or, prior to the Closing, the Company), as applicable, and will apply only as set forth in such instrument and will not operate as a waiver of, or estoppel with respect to, any failure to comply with any other obligation, covenant, agreement or condition contained in this Agreement. Any extension or waiver by the Holder Representative (or, prior to the Closing, the Company) will be binding on the Company, each Shareholder, and the Holder Representative.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have entered into and signed this Agreement as of the date and year first above written.

[THE BUYER]

By:_____

Name:_____

Its:_____

[THE COMPANY]

By:_____

Name:_____

Its:_____

[HOLDER REPRESENTATIVE]

By:_____

Name:_____

Its:_____

SHAREHOLDERS:

ANNEX A DEFINITIONS

“280G Proposal” has the meaning set forth in Section 5.13(b).

“Accounts Receivable” has the meaning set forth in Section 2.5(b).

“Adjusted Purchase Price” has the meaning set forth in Section 1.2.1(a)(ii).

“Affiliate” means, with respect to a Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with the first Person.

“Affiliated Group” means any affiliated, consolidated, combined, unitary, or similar group, including any arrangement for group or consortium relief or similar arrangement.

“Agreement” has the meaning set forth in the first paragraph of this Agreement.

“Agreement Date” has the meaning set forth in the first paragraph of this Agreement.

“Annual Financial Statements” has the meaning set forth in Section 2.5(a).

“Anti-Bribery Laws” means the U.S. Foreign Corrupt Practices Act 1977, as amended, any rules and regulations thereunder, the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions and any legislation implementing that convention and any similar anti-bribery/anti-corruption laws to the extent that they are applicable to the Company or any of its Representatives.

“Antitrust Laws” means the Sherman Antitrust Act, the Clayton Antitrust Act of 1914, the HSR Act, the Federal Trade Commission Act of 1914, and all other Applicable Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or significant impediments to or lessening of competition or the creation or strengthening of a dominant position through merger or acquisition, in any case that are applicable to the Transactions.

“Applicable Law” means, with respect to any Person, [any Belgian](#), European Community, United States (federal, state or municipal), or other foreign, or local, municipal, or other law, statute, constitution, legislation, principle of common law, resolution, ordinance, code, edict, decree, guidance, regulation, rule, directive, license, permit, or requirement issued, enacted, adopted, promulgated, implemented, or otherwise put into effect by or under the authority of any Governmental Body, and any Orders applicable to such Person or such Person’s Affiliates, or to any of their respective employees, assets, properties, or businesses.

“Basket” has the meaning set forth in Section 8.3(c).

~~**“Breach” or “Breached” means a**~~ **“Breach”** of a representation, warranty, certification, covenant, obligation, or other provision of this Agreement or any Operative Document will be deemed to have occurred, or a representation, warranty, certification, covenant, obligation, or other provision of this Agreement or any Operative Document will have been **“Breached,”** if there is or has been (a) any inaccuracy in or breach of, or any failure to perform or comply (in whole or in

part) with, such representation, warranty, certification, covenant, obligation, or other provision, or (b) any Claim (by any Person) or other occurrence or circumstance that is or was inconsistent with such representation, warranty, certification, covenant, obligation, or other provision, ~~and the term “Breach” means any such inaccuracy, breach, failure, Claim, occurrence or circumstance.~~

“**Business**” means [Description of the Company’s current business to be inserted].

“**Business Day**” means any day, other than a Saturday, a Sunday, or any other day on which commercial banks in New York, New York are authorized or required by Applicable Law to be closed.

“**Buyer**” has the meaning set forth in the first paragraph of this Agreement.

“**Buyer Entity**” means any of the Buyer, an Affiliate of the Buyer that is not an individual, a successor of the Buyer, or another Person designated by one of the foregoing (including the Company after giving effect to the Transactions).

“**Cash**” means, the Company’s consolidated unrestricted cash and cash equivalents, in accordance with GAAP, that is held in bank accounts owned and controlled by the Company. Cash will be net of outstanding checks, drafts, wire transfers, and debit transactions not yet cashed or settled.

“**Child**” has the meaning set forth in Section ~~2.10.10~~2.10.9(d).

“**Claim**” means any claim, demand, complaint, cause of action, suit, proceeding, arbitration, audit, hearing, investigation, or inquiry (whether formal or informal, civil, criminal, or administrative).

“**Claim Notice**” has the meaning set forth in Section 8.4(b).

“**Closing**” has the meaning set forth in Section 1.5.

“**Closing Amount**” has the meaning set forth in Section 1.2.1(b)(iv).

“**Closing Date**” has the meaning set forth in Section 1.5.

“**Closing Debt**” means all Debt as of immediately prior to the Closing.

“**Code**” means the Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated thereunder, as in effect from time to time.

“**Common Shares**” has the meaning set forth in Section 2.3(a).

“**Company**” has the meaning set forth in the first paragraph of this Agreement.

“**Company Balance Sheet**” has the meaning set forth in Section 2.5(a).

“**Company Balance Sheet Date**” has the meaning set forth in Section 2.5(a).

“Company Data Agreement” has the meaning set forth in Section ~~2.10.10~~2.10.9(a).

“Company Intellectual Property Rights” means all intellectual property and proprietary rights worldwide owned (or purported to be owned), applied for, used, licensed (whether as licensor or licensee) by, or under obligation of assignment to the Company, including any and all non-U.S. and U.S. trade names, trademarks, service marks, domain names, logos, copyrights, design rights, mask works, rights in databases, moral rights, trade secrets, trade dress, patents, and all associated rights and all registrations, applications, renewals, extensions, and continuations (in whole or in part) of any of the foregoing, together with all goodwill associated therewith and all rights and causes of action for infringement, misappropriation, violation, misuse, dilution, unfair trade practice or otherwise associated therewith.

“Company IP” means all Company Technology and Company Intellectual Property Rights.

“Company IP Agreements” means all Inbound Licenses and Outbound Licenses.

“Company IP Protection Agreements” has the meaning set forth in Section ~~2.10.6~~2.10.5.

“Company IP Registrations” has the meaning set forth in Section ~~2.10.2(a)~~1.1.1.

“Company-Owned IP” means all Company IP other than Third-Party IP or other Company Intellectual Property Rights that may be used without a license agreement (e.g. data not subject to intellectual property protection).

“Company Permits” has the meaning set forth in Section 2.13(a).

“Company Privacy Commitments” has the meaning set forth in Section ~~2.10.10~~2.10.9(a).

“Company Products” means all products or services, ~~either complete or under development,~~ (a) that are currently ~~or that are currently intended to be, developed, manufactured, marketed, sold, offered for sale, imported, exported, supplied, promoted, licensed, distributed, supported, hosted, serviced, made available, maintained, or otherwise commercialized by the Company,~~ (b) that were historically developed, manufactured, or were in the previous twelve (12) months, marketed, sold, offered for sale, ~~imported, exported,~~ supplied, promoted, ~~licensed,~~ distributed, supported, hosted, serviced, made available, maintained, or otherwise commercialized by the Company, ~~(e) or (b) from which the Company recognizes any revenue (including revenue associated with maintenance or service agreements), (d) that are currently used or currently intended to be used to provide services to the Company’s customers, or (e) that have been developed by or for the Company,~~ in each case together with any and all supplements, modifications, updates, corrections, and enhancements to such products or services, shipping versions of such products or services, any English and non-English language versions of such products or services; and any and all documentation relating to the foregoing.

“Company Service Providers” means directors, officers, employees, agents, consultants, or independent contractors of the Company.

“Company Technology” means all Technology owned (or purported to be owned), used,

or licensed (whether as licensor or licensee) by the Company.

“Competing Transaction” means, other than the Transactions, any of the following: (a) any merger, consolidation, share exchange, recapitalization, or establishment of or investment in the Company or another legal entity or other similar transaction involving the Company or any subsidiary of the Company, (b) any sale, lease, license, exchange, mortgage, pledge, transfer, or other disposition of a material portion of the assets of the Company or any subsidiary of the Company, or any sale, exclusive license, or other transfer of any intellectual property, of the Company or any subsidiary of the Company, or any entry into a development, licensing, or other agreement with a third party out of the ordinary course of business that could reasonably be expected to deprive the Buyer of the benefits of the Transactions, (c) any sale or transfer of shares or other securities (or instruments that provide the right or ability to acquire shares or other securities) of the Company or any subsidiary of the Company, or (d) any change of control transaction involving the Company or any subsidiary of the Company (however structured).

“Competitor” means any Person engaged in any activity or business that is of a similar nature as, or substantively similar to, any activity or business ~~of the Buyer,~~conducted by the Company, or any of their respective ~~Affiliates~~Subsidiaries as of the Closing or any successor to such business of the Buyer, the Company, or any of their respective Affiliates, including any Person that produces, markets, distributes, sells, or otherwise derives benefit from the production, marketing, distribution, or sale of products or services that compete with the products or services produced, marketed, distributed, sold, or being developed by the Buyer, the Company, or any of their respective Affiliates, or any successor to such business of Buyer, the Company, or their respective Affiliates, or any Person that is preparing to market or is developing products that will be in competition with the products or services produced, marketed, distributed, sold, or being developed by the Buyer, the Company, or any of their respective Affiliates, or any successor to such business of the Buyer, the Company, or any of their respective Affiliates, anywhere in the world.

“Confidentiality Agreement” means the Mutual Nondisclosure Agreement effective as of[_____], between the Buyer and the Company.

“Conflict Minerals” means (a) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives that originates in the Democratic Republic of the Congo or a country that shares an internationally recognized border with the Democratic Republic of the Congo, and (b) any other mineral or its derivatives, the exploitation and trade of which is determined by the Secretary of State of the United States to be financing conflict in the Democratic Republic of the Congo or a country that shares an internationally recognized border with the Democratic Republic of the Congo.

“Continuing Employees” has the meaning set forth in Section 5.8(a).

“Continuing Employee Offer Letter” has the meaning set forth in Section 5.8(a).

“Contract” means any contract, agreement, permission, consent, lease, license, release, covenant not to sue, commitment, plan, arrangement, undertaking, or understanding, oral or written except for any purchase order.

“Copyleft License” means any license that requires, including as a condition of use, distribution or other Exploitation, that any Software or content subject to such license that is distributed, modified or interacted with through a network (including making available to third parties as a service) (or any other Software or content incorporated into, derived from, used, or distributed with any such Software or content): (i) in the case of Software, be made available to any third-party recipient in a form other than binary form (e.g., source code form), (ii) be made available to any third-party recipient under terms that allow preparation of derivative works, (iii) in the case of Software, be made available to any third-party recipient under terms that allow Software or interfaces therefor to be reverse engineered, reverse assembled, or disassembled (other than to the extent any contrary restriction would be unenforceable under Applicable Law), or (iv) be made available to any third-party recipient at no license fee. Copyleft Licenses include the GNU General Public License, the GNU Lesser/Library General Public License, the GNU Affero General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License, the European Union Public Licence, the Server Side Public License, and all Creative Commons “sharealike” licenses.

“Copyleft Materials” means any Software or content subject to a Copyleft License.

“Current Assets” means the consolidated short-term assets of the Company as of [the](#) relevant date or time, including Cash but excluding any deferred Tax assets, [Tax liabilities](#), income Tax assets, prepaid Taxes and unrecoverable VAT receivables, prepared in accordance with the Working Capital Principles. ²⁸[34](#)

“Current Liabilities” means the consolidated short-term liabilities of the Company as of the relevant date or time, deferred Tax liabilities, unpaid current Taxes (which includes unpaid income taxes payables), any deferred revenue, and any provisions against unrecoverable VAT receivables, but excluding the current portion of any Debt and any Unpaid Transaction Costs, prepared in accordance with the Working Capital Principles. ²⁹[35](#) ³⁶

“Customers” has the meaning set forth in Section ~~2.22~~[2.21](#)(a).

“Debt” means, without duplication, (a) all obligations (including the principal amount thereof or, if applicable, the accreted amount thereof and the amount of accrued and unpaid interest thereon) of the Company, whether or not represented by bonds, debentures, notes or other securities (whether or not convertible into any other security), for the repayment of money borrowed, whether owing to banks, financial institutions, on equipment leases or otherwise, (b) all deferred indebtedness of the Company for the payment of the purchase price of property or assets purchased (other than accounts payable incurred in the ordinary course of business), (c) all obligations of the Company to pay rent or other payment amounts under a lease which is required to be classified as a capital lease or a liability on the face of a balance sheet prepared in accordance with GAAP, (d) all outstanding reimbursement obligations of the Company with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of the Company, (e) all

²⁸³⁴ Note to Draft: Subject to due diligence.

²⁹³⁵ Note to Draft: Subject to due diligence.

³⁶ [Note to Draft: Current Assets and Current Liabilities definitions also remain subject to review by Shareholders’ CPAs.](#)

obligations of the Company under any interest rate swap agreement, forward rate agreement, interest rate cap or collar agreement or other financial agreement or arrangement entered into for the purpose of limiting or managing interest rate risks, (f) all obligations secured by any Encumbrance existing on property owned by the Company, whether or not indebtedness secured thereby will have been assumed, (g) all premiums, penalties, fees, expenses, breakage costs and change of control payments required to be paid or offered in respect of any of the foregoing on prepayment (regardless if any of such are actually paid), as a result of the consummation of the Transactions, or in connection with any lender consent, (h) unpaid current Taxes only to the extent determined in accordance with the past practices of the Company and its Subsidiaries in filing Tax Returns and paying Taxes (including reporting positions, jurisdictions and types of Taxes, elections and accounting methods), and (i) all guaranties, endorsements, assumptions and other contingent obligations of the Company in respect of, or to purchase or to otherwise acquire, any of the obligations and other matters of the kind described in any of the clauses (a) through (h) appertaining to third parties.

~~“Defense Costs” have the meaning set forth in Section 8.5.~~

“**Disclosure Memorandum**” has the meaning set forth in the first paragraph of Article II.

“**Employee Benefit Plan**” means any retirement, group health, severance, other welfare, change of control, retention, equity purchase, equity option, restricted equity, phantom equity, equity appreciation rights, bonus, incentive, fringe benefit or other employee benefit, or compensatory plan, program, policy, practice, Contract, or fund (including any “employee benefit plan,” as defined in Section 3(3) of ERISA), or any employment, consulting or personal services contract, or letter, whether written or oral, funded or unfunded or U.S. or non-U.S., (a) sponsored, maintained or contributed to by the Company or any ERISA Affiliate or to which the Company or ERISA Affiliate is a party, (b) covering or benefiting any current or former employee, agent, director, or independent contractor of the Company or any ERISA Affiliate (or any dependent or beneficiary of any such individual), or (c) with respect to which the Company or any ERISA Affiliate has had, has or could have any actual or contingent present or future obligation or Liability (including with respect to former service providers of the Company; or any ERISA Affiliate, or dependent or beneficiary of any such individual).

“**Employment~~and IP~~ Representations**” has the meaning set forth in Section 8.1.

“**Encumbrance**” means liens, mortgages, pledges, deeds of trust, security interests, charges, easements, covenants, restrictions, encumbrances, and other adverse claims or interests of any kind.

“**Environmental Law**” means any Applicable Law or Contract relating to (a) health and safety, (b) pollution, or (c) contamination, protection, or restoration or remediation of the environment or natural resources, including any such Applicable Law or Contract related to the management or disposal of Hazardous Materials.

“**ERISA**” means the United States Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder, all as in effect from time to time.

“**ERISA Affiliate**” means any trade or business that is treated as a single employer with

the Company for purposes of Section 414 of the Code or Section 4001(b)(1) of ERISA.

“**EU**” means the European Union.

“**Excluded Subsidiaries**” has the meaning set forth in Section 5.14.

“**Exploit**” or “**Exploitation**” means to use, possess, reproduce, modify, display, market, offer as a service, perform, publish, transmit, broadcast, sell, offer to sell, license or sublicense, distribute, design, develop, manufacture, import, provide, or otherwise exploit.

“**Final Adjustments Spreadsheet**” has the meaning set forth in Section 1.3.2.

“**Final Closing Consideration Spreadsheet**” has the meaning set forth in Section 1.3.1.

“**Final Working Capital**” has the meaning set forth in Section 1.6(c).

“**Final Working Capital Spreadsheet**” has the meaning set forth in Section 1.6(a).

“**Financial Statements**” has the meaning set forth in Section 2.5(a).

“**Fraud**” means ~~fraud, intentional breach,~~ with respect to a party, an actual and intentional misrepresentation, or willful misconduct of a material existing fact with respect to the matters set forth in this Agreement, and upon which the other party justifiably relies with resulting Losses.

“**Fundamental Representations**” means the representations and warranties contained in Sections 2.1, 2.2, 2.3, ~~2.20~~2.19, 3.1, 3.2 and ~~3.4~~3.3.

“**GAAP**” means [generally accepted accounting principles in the International Financial Reporting Standards (IFRS)]³⁰³⁷.

“**Governmental Body**” means any government or any agency, arbitrator, board, bureau, commission, court, department, official, political subdivision, tribunal, or other instrumentality of any government, or any self-regulatory or quasi-governmental body, in each case whether supranational, federal, state or local, Belgian, U.S., or non-U.S.

“**Hazardous Materials**” means any petroleum products or byproducts, radioactive or explosive materials, asbestos or asbestos-containing material, radon gas, urea formaldehyde, toxic mold or fungi, or polychlorinated biphenyls, and any other chemicals, substances, waste, or materials that are considered or deemed to be, or regulated as, hazardous, toxic, infectious, or dangerous under applicable Environmental Laws or for which Liability or standards of conduct may be imposed pursuant to any Environmental Law.

“**Holder Representative**” has the meaning set forth in Section 8.6(a).

“**ICT Infrastructure**” has the meaning set forth in Section ~~2.10.14~~2.10.13(a).

“**Inbound License**” means any Contract pursuant to which the Company has the right to

³⁰³⁷ Note to Draft: Subject to due diligence.

Exploit any Company IP for which the Company does not own all right, title, and interest.

“Indemnification Claim” means any Claim for indemnification under Article VIII.

“Indemnification Holdback Amount” has the meaning set forth in Section 1.3(a).

“Indemnification Holdback Fund” has the meaning set forth in Section 1.3(a).

“Indemnified Party” and ***“Indemnified Parties”*** has the meaning set forth in Section 8.2(a).

“Initial Adjustments Spreadsheet” has the meaning set forth in Section 1.3.2.

“Initial Closing Consideration Spreadsheet” has the meaning set forth in Section 1.3.1.

“Interim Financial Statements” has the meaning set forth in Section 2.5(a).

“Key Employees” has the meaning set forth in the recitals.

“Key Employee Offer Letter” has the meaning set for the in the recitals.

“Knowledge” means with respect to the Company, the knowledge of any of the Shareholders and [●]³⁴³⁸ in each case after reasonable investigation or inquiry by such Person of such other individuals of the Company who are his or her direct reports.

“Leased Real Property” has the meaning set forth in Section 2.7(b).

“Leases” has the meaning set forth in Section 2.7(b).

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

“Liability” means any and all debts, liabilities, ~~Taxes~~, penalties, expenses, and obligations of any nature whatsoever, whether accrued or fixed, absolute or contingent, mature or unmatured or determined or indeterminable, including those arising under Applicable Law and those arising under any Contract.

“Losses” has the meaning set forth in Section 8.2(a).

“Material Adverse Effect” means (a) any change, event, violation, inaccuracy, circumstance or effect (each, an ***“Effect”***) that, individually or taken together with all other Effects, and regardless of whether such Effect constitutes a Breach of any representations or warranties made by, or a Breach of the covenants, agreements, or obligations of, the Company, is, or would reasonably be likely to be or become a material adverse effect on the business, operations, assets, liabilities (absolute, accrued, contingent, or otherwise), condition (financial or other), or prospects of the Company (taken as a whole); provided that none of the following will be deemed to

³⁴³⁸ **Note to Draft:** To be determined in due diligence.

constitute, and none of the following will be taken into account in determining whether there has been, a Material Adverse Effect: (i) changes in general economic conditions in the United States or any other jurisdiction in which the Company operates, (ii) changes affecting the industry generally in which the Company operates, (iii) the outbreak or escalation of war, hostilities, or terrorist activities, either in the United States or any other jurisdiction in which the Company operates, ~~or~~ (iv) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates, (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer, (vi) any matter of which Buyer is aware on the date hereof, (vii) any natural or man-made disaster or acts of God, (viii) any epidemics, pandemics, disease outbreaks, or other public health emergencies or (ix) changes in Applicable Law or GAAP, unless, in the case of each of the foregoing clauses (i) through (ix), such changes disproportionately affect the Company as compared to other Persons or businesses that operate in the industry in which the Company operates, or (b) any effect or circumstance that could reasonably be expected to materially impair or materially delay the Company's ability to perform under this Agreement or the other Operative Documents.

“Material Contract” has the meaning set forth in Section 2.11(a).

“NDA” has the meaning set forth in the recitals.

“OFAC” has the meaning set forth in Section 2.13(c).

“Offer Letter” has the meaning set forth in Section 5.8.

~~***“Offered Employee”*** has the meaning set forth in Section 5.8.~~

“Open Source License” means any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license, including any license approved by the Open Source Initiative, any Copyleft Licenses, or any Creative Commons License, and including any adaptation or modification (e.g., adding the Commons Clause) of or exception to any such license.

“Open Source Materials” means any Software or content subject to an Open Source License.

“Operative Document” and collectively ***“Operative Documents”*** means each of this Agreement and the other agreements, documents, and certificates referenced in this Agreement to be executed and delivered on the Agreement Date or prior to or at the Closing.

“Order” means any judgment, writ, decree, stipulation, determination, decision, award, rule, preliminary or permanent injunction, temporary restraining order, or other order.

“Outbound License” means any Contract to which the Company is a party and pursuant to which any Person is authorized to Exploit any Company-Owned IP.

“Owned Real Property” has the meaning set forth in Section 2.7(a).

“Parachute Payment Waiver” has the meaning set forth in Section 5.13(a).

“Payments Administrator” has the meaning set forth in Section 1.3.3.

“Permitted Encumbrances” means (a) conditional sales or similar security interests granted in connection with the purchase of equipment or supplies in the ordinary course of business and consistent with past practice, (b) assessments for ~~current~~ Taxes (i) not yet due and payable or (ii) being contested in good faith pursuant to appropriate proceedings, or (c) statutory liens securing indebtedness owed by the Company that is in the aggregate less than \$10,000, which was incurred in the ordinary course of business and consistent with past practice and is not yet due and payable.

“Person” means any individual, proprietorship, firm, company, syndicate, corporation, partnership, trust, joint venture, limited liability company, association, committee, organization, other entity, Governmental Body, any organization or group of persons acting in concert, or regulatory authority.

“Personal Information” means data that relates to, identifies, describes, or is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with an identified or identifiable individual or household, including name, address, telephone number, electronic mail address, unique government-issued identifier, unique or online identifier, deterministic or probabilistic identifiers, account number, credit or debit card number, IP address or other electronic network activity information, biometric or health information, protected class information, professional, employment-related or educational information, geolocation data, commercial information (including products or services or other purchasing or consuming histories or tendencies), inferences drawn from personal information to create a profile, or any other data that may be used to identify an individual or is otherwise considered personally identifiable information, sensitive data, protected health information, or special categories of personal data or personal information under Applicable Law.

“Personal Property” has the meaning set forth in Section 2.7(e).

“Policies” has the meaning set forth in Section ~~2.19~~2.18(a).

“Post-Closing Tax Periods” means collectively, all taxable periods beginning after the Closing Date and the portion beginning after the Closing Date for all Straddle Periods.

“Pre-Closing Tax Periods” means collectively, all taxable periods ending on or prior to the Closing Date and the portion through the end of the Closing Date for all Straddle Periods.

“Pre-Closing Taxes” means without duplication, any and all Taxes ~~and claims for Taxes~~ (a) for which the Company is liable ~~attributable to~~ for all Pre-Closing Tax Periods (in the case of any Straddle Period, as determined in accordance with Section 5.7(c)), (b) ~~of the Company, the Shareholders, or their respective Affiliates~~ for which the Company ~~or any Indemnified Party~~ is liable, ~~whether by reason of any requirement to withhold or otherwise, in connection with the Transactions, (e)~~ of any member of an Affiliated Group of which the Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, ~~(d)~~ or of any Person for which the Company is liable as a transferee or successor, by Contract or pursuant to Applicable Law, rule or

regulation, for any Pre-Closing Tax Period and for which such Taxes relate to an event or transaction occurring on or before ~~or as a result of~~ the Closing, ~~(e) arising out of or resulting from the Transactions, including any withholding and the Company's portion of applicable payroll Taxes resulting from the payment of the Adjusted Purchase Price and Unpaid Transaction Costs under this Agreement~~ Date, ~~(fd)~~ that are Transfer Taxes, ~~(g) arising out of or resulting from any inclusion under Applicable Law with respect to Taxes in respect of any "foreign corporation" owned, directly or indirectly,~~ required to be paid by the ~~Company~~ Shareholders pursuant to the extent such inclusion results from any transactions or ownership of assets occurring between the beginning of the taxable year of such foreign corporation that includes the Closing Date and through the Closing, ~~(h) arising out of or resulting from a Breach of any representation or warranties made in Section 2.15 or any Breach or non-performance of Section 5.7, or~~ ~~(ia)~~ arising under Applicable Law with respect to Taxes to the extent such Taxes are attributable to earnings and profits of the Company and any of its subsidiaries with respect to a Pre-Closing Tax Period. Pre-Closing Taxes will also include any ~~Liability~~ liability for Tax payments required to be made after the Closing Date under any ~~Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar Contract~~ to which the Company was obligated, or was a party, on or prior to the Closing Date. Notwithstanding anything to the contrary in this Agreement, Pre-Closing Taxes will be computed without regard to ~~(aa) any deductions arising in respect of or resulting from any deductible expenses related to the Transactions (including any bonus, severance, or other compensatory expense), (bb) the availability of any Tax refund, offset, or credit (if reflected on a Financial Statement), or net operating loss, with respect to any Pre-Closing Tax Period, or~~ ~~(cc)~~ any net operating losses or credits attributable to generated in a Post-Closing Tax Period and available as a carryback to any Pre-Closing Tax Period. ~~Notwithstanding anything in this Agreement, (xx) any reduction in a net operating loss for a Pre-Closing Tax Period will be deemed to result in Pre-Closing Taxes (computed assuming the highest marginal tax rate that would apply to the Company for such Pre-Closing Tax Period if it had positive taxable income), and (yy) Pre-Closing Taxes will be determined without regard to disclosures made in the Disclosure Memorandum.~~

"Privacy Law" has the meaning set forth in Section ~~2.10.10~~ 2.10.9(a).

"Processing" has the meaning set forth in Section ~~2.10.10~~ 2.10.9(a).

"Pro Rata Share" means, with respect to a particular Shareholder, a fraction equal to (a) the portion of the Adjusted Purchase Price that such Shareholder is entitled to be paid, divided by (b) the aggregate Adjusted Purchase Price that all Shareholders (in aggregate) are entitled to be paid pursuant to this Agreement.

"Purchase Price" has the meaning set forth in Section 1.2.1(a)(i).

"Related Party Contract" has the meaning set forth in Section ~~2.17~~ 2.16.

"Release Date" has the meaning set forth in Section 1.3(a).

"Released Claims" has the meaning set forth in Section 5.12(a).

"Representatives" has the meaning set forth in Section 5.6(a).

"Required Actions" has the meaning set forth in Section 5.2.

“Required Consents” has the meaning set forth in Section 5.2.

“Required Contracts” has the meaning set forth in Section 5.2.

“Required Notices” has the meaning set forth in Section 5.2.

“Restated and Amended Lease Agreement” means the restated and amended lease agreement entered into by the Company and [•] with respect to the property situated at [•].³²³⁹

“Restricted Period” has the meaning set forth in Section ~~5.5(a)~~5.2.

“Rules” have the meaning set forth in Section 10.6(b).

~~**“Settlement Payments”** have the meaning set forth in Section 8.5.~~

“Shareholders” means [•].

“Shares” has the meaning set forth in Section 2.3(a).

“Software” means any and all computer programs, software source code, object code, development tools, programmer notes, specifications, user interfaces, ~~and “look and feel.”~~

“Source Code” means the human readable source code for any Software that is part of the Company IP as well as any confidential or proprietary information relating to any Software source code or any of the Company IP.

“Special Representations” has the meaning set forth in Section 8.1.

“Specified Claims” has the meaning set forth in Section 8.3(~~eh~~h).

“Standards Organization” has the meaning set forth in Section ~~2.10.12~~2.10.11

“Straddle Period” means each Taxable period beginning before and ending after the Closing Date.

“Subsidiary” means, with respect to any Person, any corporation, entity or other organization, whether incorporated or unincorporated, of which (a) such first Person directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions, or (b) such first Person is a general partner or managing member. For the avoidance of doubt, all references in this Agreement to any Subsidiary of the Company shall, unless indicated otherwise, be exclusive of the Excluded Subsidiaries.

“Survival Period” has the meaning set forth in Section 8.1.

“Tax” (and, correlative meaning, **“Taxes”** or **“Taxable”**) means any and all (a) U.S. or non-U.S., federal, state, or local taxes, ~~of any kind whatsoever~~ and any charges, fees, levies, imposts,

³²³⁹ Note to Draft: Subject to further due diligence.

escheat for unclaimed property, duties and governmental fees, or other like assessments or charges in the nature of ~~any kind whatsoever a tax~~, including income taxes (whether imposed on or measured by net income, gross income, income as specially defined, earnings, profits, or selected items of income, earnings, or profits), capital taxes, gross receipts taxes, environmental taxes, sales taxes, use taxes, value added taxes, goods and services taxes, transfer taxes, franchise taxes, license taxes, withholding taxes or other withholding obligations, payroll taxes, employment taxes, excise taxes, severance taxes, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, ad valorem taxes, property taxes, windfall profits taxes, alternative or add-on minimum taxes, and customs duties, (b) interest, penalties, fines, additions to tax, or additional amounts imposed by any Tax Authority in connection with (i) any item described in clause (a) or (ii) the failure to comply with any requirement imposed with respect to any Tax Returns, (c) any liability ~~in respect of~~ for any items described in clause (a) or clause (b) that is incurred by reason of being (or ceasing to be) a member of an ~~affiliated, consolidated, combined, unitary, or aggregate group~~ Affiliated Group for any Taxable period, and (d) liabilities ~~in respect of~~ for any items described in clause (a) or clause (b) payable by reason of Contract, assumption, transferee liability, operation of law, or otherwise.

“Tax Authority” means any Governmental Body having jurisdiction with respect to any Tax.

“Tax Contest” means any inquiry, audit, examination, hearing, trial, appeal, or other administrative or judicial proceeding with respect to any Taxes or Tax Return of the Company, ~~and any correction of a tax practice (including one relating to the filing, reporting, withholding, or payment~~ any of any Tax) its Subsidiaries in respect of a Pre-Closing Tax Period or Straddle Period.

“Tax Representations” has the meaning set forth in Section 8.1.

“Tax Return” means any report, return, statement or other written information (including estimated and withholding Tax returns and reports), and, including any schedules or attachments thereto and any amendment thereof, supplied or required to be supplied to a Tax Authority in connection with Taxes.

“Technology” means all products, tools, devices, mask works, computer programs, software, source code, object code, development tools, techniques, concepts, know-how, algorithms, methods, processes, procedures, formulae, designs, drawings, customer lists, supplier lists, databases, data collections, information, specifications, brands, logos, marketing materials, user interfaces, websites, specifications, programmer notes, specifications, packaging, trade dress, content, graphics, artwork, audiovisual works, images, photographs, literary works, performances, music, sounds, content, user interfaces, “look and feel,” inventions (whether or not patentable), invention disclosures, discoveries, works of authorship (whether or not copyrightable), designs, and other technology.

“Third-Party Claim” means any Claim by any Person who is not a third-party to this Agreement or an Affiliate of a party to this Agreement, including a Governmental Body, ~~or a Tax Contest~~.

“Third-Party Contractor Agreement” has the meaning set forth in Section 2.8(a).

“Third-Party IP” means any Company IP for which the Company does not own all right, title, and interest and which is licensed to the Company under an Inbound License.

“Third-Party Processor” has the meaning set forth in Section ~~2.10.10~~2.10.9(b).

“Third-Party Vendor” has the meaning set forth in Section ~~2.22~~2.21(b).

“Transaction Costs” means all fees, costs, and expenses incident to the negotiation, preparation, and execution of this Agreement and the other Operative Documents, and the consummation of the Transactions, including, in the case of the Company, (a) any change-in-control costs, any success fees, any bonuses, compensation, severance, or other payments to the Company Service Providers or Affiliates triggered or accelerated by the Transactions (including the employer portion of any related employment Taxes imposed on such amounts), regardless of whether such payments are made prior to, at, or following the Closing, but excluding in all cases post-Closing compensation packages for the Continuing Employees, (b) the ~~Company~~employer’s portion of applicable payroll Taxes resulting from the payment of the Purchase Price and Unpaid Transaction Costs under this Agreement, (c) any fees and expenses of attorneys, accountants, financial advisors, and other advisors, and (d) any costs related to the Required Actions or procurement of the Required Consents, ~~and~~.

“Transaction Deductions” means, without duplication, any and all deductions or losses of the Company and each of its Subsidiaries for Tax purposes relating to or arising from (ea) ~~any Taxes imposed with respect to the items set forth in clauses (a)-~~ Transaction Costs and amounts that would be Transaction Costs but for the payment thereof prior to the Closing; (b) any pay down or satisfaction of Debt; (c) the payment of any fees, expenses, premiums or penalties with respect to the prepayment or satisfaction of Debt or the write-off or acceleration of the amortization of deferred financing costs associated with Debt in connection with the Transactions; or (ed) any other deductible payments attributable to the transactions contemplated by this Agreement in each case to the extent economically borne by the Shareholders as a reduction to the Purchase Price.

“Transaction Litigation” means any Claim commenced or threatened in writing based upon any alleged breach of fiduciary duty, usurping corporate opportunity or similar breach of care, loyalty, or comparable claims by or against any of the Company, the Shareholders or any of their respective directors, officers, employees, representatives, or Affiliates in connection with this Agreement, any of the other Operative Documents, or any of the Transactions.

“Transactions” means the transaction contemplated by this Agreement and the other Operative Documents.

“Transfer Taxes” means any and all transfer, documentary, sales, use, stamp, registration, value added, recording, and other similar Taxes and fees arising in connection with the Transactions (including any penalties and interest), ~~together with any costs or expenses incurred by the Buyer or its Affiliates in the preparing and filing of any related Tax Returns or documents.~~

“Unpaid Transaction Costs” means any Transaction Costs of the Company that are not fully paid with the Company’s funds prior to the Closing.

“Working Capital” means, with respect to a particular date or time, (a) the consolidated

Current Assets of the Company less (b) the consolidated Current Liabilities of the Company, prepared in accordance with the Working Capital Principles.³³⁴⁰

[“**Working Capital Principles**” means (a) the specific accounting policies set forth in the attached **Exhibit F** (the “**Specific Policies**”), (b) to the extent not expressly set forth in the Specific Policies, the accounting principles, policies, procedures, categorizations, assets recognition bases, definitions, methods, practices, and estimation techniques (including in respect of the exercise of management judgment) adopted by the Company in preparation of the financial statements as of and for the period ended [December 31], 2021, regardless of whether there is more than one interpretation of a relevant principle under GAAP (the “**Consistent Policies**”), and (c) to the extent not considered in the Specific Policies and the Consistent Policies, in accordance with GAAP at the Closing.]³⁴⁴¹

“**Working Capital Shortfall**” means the amount, if any, by which the Working Capital, as set forth in the Final Adjustments Spreadsheet, is less than the Working Capital Target.

“**Working Capital Surplus**” means the amount, if any, by which the Working Capital, as set forth in the Final Adjustments Spreadsheet, exceeds the Working Capital Target.

“**Working Capital Target**” means [●] Euros.

³³⁴⁰ Note to Draft: Subject to due diligence.

³⁴⁴¹ Note to Draft: Subject to due diligence.

EXHIBIT A
SHAREHOLDERS

EXHIBIT B
KEY EMPLOYEES

EXHIBIT C-1

REQUIRED CONSENTS

Exhibit C-2

Required contracts

EXHIBIT C-3

REQUIRED NOTICES

EXHIBIT D
REQUIRED ACTIONS

**[EXHIBIT E
FORM OF PARACHUTE PAYMENT WAIVER]**

EXHIBIT F

WORKING CAPITAL PRINCIPLES

EXHIBIT G

FORM OF AMENDED AND RESTATED LEASE AGREEMENT