
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended October 31, 2018

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from ____ to ____

Commission File Number: 001-38240

MONGODB, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

**1633 Broadway, 38th Floor
New York, NY**

(Address of principal executive offices)

26-1463205

(I.R.S. Employer
Identification No.)

10019

(Zip Code)

Registrant's telephone number, including area code: 646-727-4092

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of December 3, 2018, there were 35,408,828 shares of the registrant's Class A common stock and 18,194,724 shares of the registrant's Class B common stock, each with a par value of \$0.001 per share, outstanding.

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PART I—FINANCIAL INFORMATION**ITEM 1. FINANCIAL STATEMENTS.**

MONGODDB, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)

	October 31, 2018	January 31, 2018
Assets		
Current assets:		
Cash and cash equivalents	\$ 139,490	\$ 61,902
Short-term investments	382,681	217,072
Accounts receivable, net of allowance for doubtful accounts of \$1,434 and \$1,238 as of October 31, 2018 and January 31, 2018, respectively	37,497	46,872
Deferred commissions	19,143	11,820
Prepaid expenses and other current assets	8,653	5,884
Total current assets	587,464	343,550
Property and equipment, net	73,191	59,557
Goodwill	1,700	1,700
Acquired intangible assets, net	965	1,627
Deferred tax assets	701	326
Other assets	6,649	8,436
Total assets	\$ 670,670	\$ 415,196
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,942	\$ 2,261
Accrued compensation and benefits	21,615	17,433
Other accrued liabilities	12,169	8,423
Deferred revenue	136,609	114,500
Total current liabilities	172,335	142,617
Deferred rent, non-current	2,183	925
Deferred tax liability, non-current	42	18
Deferred revenue, non-current	17,229	22,930
Convertible senior notes, net	213,692	—
Other liabilities, non-current	67,944	55,213
Total liabilities	473,425	221,703
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Class A common stock, par value of \$0.001 per share; 1,000,000,000 shares authorized as of October 31, 2018 and January 31, 2018; 35,189,254 and 13,303,028 shares issued and outstanding as of October 31, 2018 and January 31, 2018, respectively	35	13
Class B common stock, par value of \$0.001 per share; 100,000,000 shares authorized as of October 31, 2018 and January 31, 2018; 18,406,366 and 37,371,914 shares issued as of October 31, 2018 and January 31, 2018, respectively; 18,306,995 and 37,272,543 shares outstanding as of October 31, 2018 and January 31, 2018, respectively	18	38
Additional paid-in capital	734,381	638,680
Treasury stock, 99,371 shares (repurchased at an average of \$13.27 per share) as of October 31, 2018 and January 31, 2018	(1,319)	(1,319)
Accumulated other comprehensive loss	(380)	(159)
Accumulated deficit	(535,490)	(443,760)
Total stockholders' equity	197,245	193,493
Total liabilities and stockholders' equity	\$ 670,670	\$ 415,196

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

MONGODB, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
Revenue:				
Subscription	\$ 60,090	\$ 37,885	\$ 157,588	\$ 99,603
Services	4,895	3,603	13,109	9,875
Total revenue	64,985	41,488	170,697	109,478
Cost of revenue:				
Subscription	13,248	7,904	35,434	21,669
Services	4,510	3,167	12,567	8,789
Total cost of revenue	17,758	11,071	48,001	30,458
Gross profit	47,227	30,417	122,696	79,020
Operating expenses:				
Sales and marketing	38,116	28,050	109,885	77,087
Research and development	23,179	16,588	63,254	45,414
General and administrative	14,986	9,829	38,467	26,533
Total operating expenses	76,281	54,467	211,606	149,034
Loss from operations	(29,054)	(24,050)	(88,910)	(70,014)
Other income (expense):				
Interest income	2,459	227	4,936	556
Interest expense	(4,358)	—	(5,652)	(8)
Other income (expense), net	(400)	(57)	(1,424)	298
Loss before provision for income taxes	(31,353)	(23,880)	(91,050)	(69,168)
Provision (benefit) for income taxes	(33)	336	680	817
Net loss	\$ (31,320)	\$ (24,216)	\$ (91,730)	\$ (69,985)
Net loss per share, basic and diluted	\$ (0.59)	\$ (1.39)	\$ (1.78)	\$ (4.74)
Weighted-average shares used to compute net loss per share, basic and diluted	52,702,526	17,421,642	51,431,021	14,749,500

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

MONGODB, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(in thousands)
(unaudited)

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
Net loss	\$ (31,320)	\$ (24,216)	\$ (91,730)	\$ (69,985)
Other comprehensive income (loss), net of tax:				
Unrealized gain (loss) on available-for-sale securities	9	4	(43)	(33)
Foreign currency translation adjustments	(49)	21	(178)	181
Other comprehensive income (loss)	(40)	25	(221)	148
Total comprehensive loss	\$ (31,360)	\$ (24,191)	\$ (91,951)	\$ (69,837)

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

MONGODB, INC.
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(in thousands, except share data)
(unaudited)

	Class A and Class B Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount					
Balances as of January 31, 2018	50,575,571	\$ 51	\$ 638,680	\$ (1,319)	\$ (159)	\$ (443,760)	\$ 193,493
Stock option exercises	2,540,312	2	17,583	—	—	—	17,585
Repurchase of early exercised options	(35,563)	—	—	—	—	—	—
Vesting of early exercised stock options	—	—	1,045	—	—	—	1,045
Vesting of restricted stock units	138,812	—	—	—	—	—	—
Stock-based compensation	—	—	26,850	—	—	—	26,850
Issuance of common stock under the Employee Stock Purchase Plan	277,117	—	5,626	—	—	—	5,626
Equity component of convertible senior notes	—	—	81,683	—	—	—	81,683
Purchase of capped calls	—	—	(37,086)	—	—	—	(37,086)
Unrealized loss on available- for-sale securities	—	—	—	—	(43)	—	(43)
Foreign currency translation adjustment	—	—	—	—	(178)	—	(178)
Net loss	—	—	—	—	—	(91,730)	(91,730)
Balances as of October 31, 2018	53,496,249	\$ 53	\$ 734,381	\$ (1,319)	\$ (380)	\$ (535,490)	\$ 197,245

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

MONGODB, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine Months Ended October 31,	
	2018	2017
Cash flows from operating activities		
Net loss	\$ (91,730)	\$ (69,985)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3,334	2,789
Stock-based compensation	26,850	15,066
Amortization of debt discount and issuance costs	4,233	—
Non-cash interest on office financing lease	659	—
Deferred income taxes	(351)	163
Change in fair value of warrant liability	—	(101)
Change in operating assets and liabilities:		
Accounts receivable	9,267	(4,653)
Prepaid expenses and other current assets	(4,018)	(2,120)
Deferred commissions	(5,514)	(2,217)
Other long-term assets	(33)	(670)
Accounts payable	(165)	687
Deferred rent	1,258	(85)
Accrued liabilities	7,184	2,163
Deferred revenue	16,517	21,794
Net cash used in operating activities	<u>(32,509)</u>	<u>(37,169)</u>
Cash flows from investing activities		
Purchases of property and equipment	(3,698)	(1,714)
Proceeds from maturities of marketable securities	206,000	74,230
Purchases of marketable securities	(369,736)	(72,879)
Net cash used in investing activities	<u>(167,434)</u>	<u>(363)</u>
Cash flows from financing activities		
Proceeds from exercise of stock options, including early exercised stock options	17,631	8,201
Proceeds from the issuance of common stock under the Employee Stock Purchase Plan	5,626	—
Repurchase of early exercised stock options	(327)	(149)
Proceeds from borrowings on convertible senior notes, net of issuance costs	291,145	—
Payment for purchase of capped calls	(37,086)	—
Proceeds from tenant improvement allowance on build-to-suit lease	633	—
Proceeds from the IPO, net of underwriting discounts and commissions	—	205,494
Proceeds from exercise of redeemable convertible preferred stock warrants	—	1
Payment of initial public offering costs	—	(2,344)
Net cash provided by financing activities	<u>277,622</u>	<u>211,203</u>
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(101)	182
Net increase in cash, cash equivalents and restricted cash	77,578	173,853
Cash, cash equivalents and restricted cash, beginning of period	62,427	69,412
Cash, cash equivalents and restricted cash, end of period	<u>\$ 140,005</u>	<u>\$ 243,265</u>

Supplemental cash flow disclosure of noncash investing and financing activities

Vesting of early exercised stock options	\$ 1,045	\$ 950
Costs related to initial public offering included in accounts payable and accrued liabilities	\$ —	\$ 1,529
Conversion of redeemable convertible preferred stock warrant liability to redeemable convertible preferred stock as a result of warrant exercise	\$ —	\$ 1,171
Purchases of property and equipment included in accounts payable and accrued liabilities	\$ 1,806	\$ —
Construction in progress related to build-to-suit lease obligations	\$ 11,683	\$ —

Reconciliation of cash, cash equivalents, and restricted cash within the condensed consolidated balance sheets, end of period, to the amounts shown in the statements of cash flows above:

Cash and cash equivalents	\$ 139,490	\$ 242,745
Restricted cash, current	515	520
Total cash, cash equivalents and restricted cash	\$ 140,005	\$ 243,265

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

MONGODB, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Description of Business

MongoDB, Inc. (“MongoDB” or the “Company”) was originally incorporated in the state of Delaware in November 2007 under the name 10Gen, Inc. In August 2013, the Company changed its name to MongoDB, Inc. The Company is headquartered in New York City. MongoDB is the leading, modern, general purpose database platform. The Company’s robust platform enables developers to build and modernize applications rapidly and cost-effectively across a broad range of use cases. Organizations can deploy the Company’s platform at scale in the cloud, on-premise, or in a hybrid environment. In addition to selling its software, the Company provides post-contract support, training, and consulting services for its offerings. The Company’s fiscal year ends January 31.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying interim condensed consolidated balance sheet and interim condensed consolidated statement of stockholders’ equity as of October 31, 2018, the interim condensed consolidated statements of operations and of comprehensive loss for the three and nine months ended October 31, 2018 and 2017 and the interim condensed consolidated statement of cash flows for the nine months ended October 31, 2018 and 2017, are unaudited. The interim unaudited condensed consolidated financial statements have been prepared on a basis consistent with the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company’s financial position and its statement of stockholders’ equity as of October 31, 2018, its results of operations and of comprehensive loss for the three and nine months ended October 31, 2018 and 2017, and its statement of cash flows for the nine months ended October 31, 2018 and 2017. The financial data and the other financial information disclosed in the notes to these interim condensed consolidated financial statements related to the nine-month periods are also unaudited. The results of operations for the nine months ended October 31, 2018 are not necessarily indicative of the results to be expected for the fiscal year ending January 31, 2019 or for any other future year or interim period.

The interim unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) and include the accounts of the Company and its wholly owned subsidiaries. All intercompany transactions and accounts have been eliminated. Certain information and note disclosures normally included in the financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to the applicable rules and regulations of the Securities and Exchange Commission (“SEC”). The condensed balance sheet data as of January 31, 2018 was derived from the Company’s audited financial statements, but does not include all disclosures required by U.S. GAAP. Therefore, these interim unaudited condensed consolidated financial statements and accompanying footnotes should be read in conjunction with the Company’s annual consolidated financial statements and related footnotes included in its Annual Report on Form 10-K for the fiscal year ended January 31, 2018 (the “2018 Form 10-K”).

Use of Estimates

The preparation of the interim unaudited condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Such estimates include, but are not limited to, revenue recognition, allowances for doubtful accounts, stock-based compensation, legal contingencies, fair value of acquired intangible assets and goodwill, useful lives of acquired intangible assets and property and equipment, fair value of property and equipment and accounting for income taxes. The Company bases these estimates on historical and anticipated results, trends and various other assumptions that it believes are reasonable under the circumstances, including assumptions as to future events. Actual results could differ from those estimates.

Emerging Growth Company Status

As an “emerging growth company” (“EGC”), the Jump-start Our Business Start-ups Act (“JOBS Act”), allows the Company to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies. The Company has elected to use this extended transition period under the JOBS Act. As a result, the Company’s financial statements may not be comparable to the financial statements of

MONGODDB, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies, which may make the Company's common stock less attractive to investors.

As a result of its market capitalization as of July 31, 2018, the Company expects that it will cease to qualify as an EGC as of January 31, 2019 and will no longer be able to take advantage of the extended transition period.

Significant Accounting Policies

There have been no changes to the Company's significant accounting policies described in the Company's 2018 Form 10-K.

Related Party Transactions

All contracts with related parties are executed in ordinary course of business. There were no material related party transactions in the three and nine months ended October 31, 2018 and 2017. As of October 31, 2018 and January 31, 2018, there were no material amounts payable to or amounts receivable from related parties.

New Accounting Pronouncements Not Yet Adopted

Goodwill Impairment. In January 2017, the Financial Accounting Standards Board ("FASB") issued ASU 2017-04, *Intangibles—Goodwill and Other* (Topic 350): *Simplifying the Test for Goodwill Impairment*. The new standard will simplify the measurement of goodwill by eliminating step two of the two-step impairment test. Step two measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount of that goodwill. The new guidance requires an entity to compare the fair value of a reporting unit with its carrying amount and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. Additionally, an entity should consider income tax effects from any tax deductible goodwill on the carrying amount of the reporting unit when measuring the goodwill impairment loss, if applicable. The new guidance becomes effective for the Company for the fiscal year ending January 31, 2021, though early adoption is permitted. The Company does not expect the adoption of the new accounting standard to have a material impact on its consolidated financial statements.

Leases. In February 2016, the FASB issued ASU 2016-02, *Leases* (Topic 842), which modifies lease accounting for lessees to increase transparency and comparability by recording lease assets and liabilities for operating leases and disclosing key information about leasing arrangements. In 2018, the FASB issued ASU 2018-10, *Leases, Codification Improvements* and ASU 2018-11, *Leases, Targeted Improvements*, to provide additional guidance for the adoption of the new lease guidance, including an optional transition method. Since the Company anticipates losing its EGC status as of January 31, 2019, it expects to adopt the new lease standard on February 1, 2019. The Company plans to utilize the optional transition method, which allows entities, upon adoption of the standard, to continue to present their prior comparative periods in accordance with the current guidance in ASC 840, *Leases*. The Company anticipates the most significant impact of adopting the new standard will primarily be the establishment of a right-of-use asset and a corresponding lease liability for real estate operating leases in its consolidated balance sheets. The Company is currently evaluating whether this standard will have a material impact on its consolidated financial statements.

Revenue Recognition. In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers* (Topic 606), which amends the existing accounting standard for revenue recognition. ASU 2014-09 is based on principles that govern the recognition of revenue at an amount to which an entity expects to be entitled when products are transferred to customers. Subsequently, the FASB has issued the following pronouncements related to ASU 2014-09: ASU 2016-08, *Revenue from Contracts with Customers* (Topic 606): *Principal versus Agent Considerations*; ASU 2016-10, *Revenue from Contracts with Customers* (Topic 606): *Identifying Performance Obligations and Licensing*; ASU 2016-12, *Revenue from Contracts with Customers* (Topic 606): *Narrow-Scope Improvements and Practical Expedients*; and ASU 2016-20, *Technical Corrections and Improvements to Topic 606*, which clarifies narrow aspects of ASC 606 or corrects unintended application of the guidance. The Company must adopt ASU 2016-08, ASU 2016-10, ASU 2016-12, and ASU 2016-20 with ASU 2014-09 (collectively, the "new revenue standard").

The Company currently plans to adopt the new revenue standard using the full retrospective transition method for its annual results for the fiscal year ending January 31, 2019. While the Company continues to assess the potential impacts of the new revenue standard, the Company currently expects unearned subscription revenue to decline upon adoption. Currently, as the Company's subscription offerings include software term licenses and post-contract customer support for which the Company has not established vendor specific objective evidence ("VSOE"), the entire subscription fee is recognized ratably over the term of the contract. However, under the new revenue standard, the requirement for VSOE for undelivered elements

MONGODDB, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

is eliminated and, as a result, the Company is required to identify all performance obligations in a contract and recognize revenue based on each performance obligation separately. The Company currently expects that the portion related to the software term license deliverable will be recognized upon delivery, which may result in greater fluctuations in its consolidated financial statements. The Company currently does not believe that the new revenue standard will have a material impact on the other deliverables of each contract. The Company also expects the new revenue standard to impact recognition of contract acquisition costs, both with respect to the amounts that will be capitalized as well as the period of amortization. The Company continues to evaluate the effect that the new revenue standard will have on its consolidated financial statements and related disclosures. Its preliminary assessments are subject to change.

3. Fair Value Measurements

The following tables present information about the Company's financial assets and liabilities that have been measured at fair value on a recurring basis as of October 31, 2018 and January 31, 2018, and indicate the fair value hierarchy of the valuation inputs utilized to determine such fair value (in thousands):

	Fair Value Measurement at October 31, 2018			
	Level 1	Level 2	Level 3	Total
Financial Assets:				
Cash and cash equivalents:				
Money market funds	\$ 893	\$ —	\$ —	\$ 893
Short-term investments:				
U.S. government treasury securities	382,681	—	—	382,681
Total financial assets	<u>\$ 383,574</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 383,574</u>

	Fair Value Measurement at January 31, 2018			
	Level 1	Level 2	Level 3	Total
Financial Assets:				
Cash and cash equivalents:				
Money market funds	\$ 45,918	\$ —	\$ —	\$ 45,918
Short-term investments:				
U.S. government treasury securities	217,072	—	—	217,072
Total financial assets	<u>\$ 262,990</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 262,990</u>

The Company utilized the market approach and Level 1 valuation inputs to value its money market mutual funds and U.S. government treasury securities because published net asset values were readily available. As of October 31, 2018 and January 31, 2018, gross unrealized gains and unrealized losses for cash equivalents and short-term investments were not material, and the contractual maturity of all marketable securities was less than one year.

In addition to its cash, cash equivalents and short-term investments, the Company measures the fair value of its outstanding Notes (as defined below) on a quarterly basis for disclosure purposes. The Company considers the fair value of the Notes at October 31, 2018 to be a Level 2 measurement due to limited trading activity of the Notes. Refer to Note 4, *Convertible Senior Notes*, to the condensed consolidated financial statements for further details.

4. Convertible Senior Notes

In June 2018, the Company issued \$250.0 million aggregate principal amount of 0.75% convertible senior notes due 2024 (the "Notes") in a private placement and, in July 2018, the Company issued an additional \$50.0 million aggregate principal amount of the Notes pursuant to the exercise in full of the initial purchasers' option to purchase additional Notes. The Notes are senior unsecured obligations of MongoDB and interest is payable semiannually in arrears on June 15 and December 15 of each year, beginning on December 15, 2018, at a rate of 0.75% per year. The Notes will mature on June 15, 2024, unless earlier converted, redeemed or repurchased. The total net proceeds from the offering, after deducting initial purchase discounts and estimated debt issuance costs, were approximately \$291.1 million.

The initial conversion rate is 14.6738 shares of MongoDB's Class A common stock per \$1,000 principal amount of Notes, which is equal to an initial conversion price of approximately \$68.15 per share of Class A common stock, subject to

MONGODDB, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

adjustment upon the occurrence of specified events. The Notes will be convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding March 15, 2024, only under the following circumstances:

- (1) during any fiscal quarter commencing after the fiscal quarter ending on October 31, 2018 (and only during such fiscal quarter), if the last reported sale price of the Company's Class A common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price of the Notes on each applicable trading day;
- (2) during the five-business day period after any five consecutive trading day period (the "measurement period") in which the trading price per \$1,000 principal amount of the Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's Class A common stock and the conversion rate of the Notes on each such trading day;
- (3) if the Company calls any or all of the Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or
- (4) upon the occurrence of specified corporate events (as set forth in the indenture governing the Notes).

On or after March 15, 2024, until the close of business on the scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes, in multiples of \$1,000 principal amount, at the option of the holder, regardless of the foregoing circumstances. Upon conversion, the Company will satisfy its conversion obligation by paying or delivering, as the case may be, cash, shares of the Company's Class A common stock or a combination of cash and shares of the Company's Class A common stock, at the Company's election. If a fundamental change (as defined in the indenture governing the Notes) occurs prior to the maturity date, holders of the Notes will have the right to require the Company to repurchase for cash all or any portion of their Notes at a repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, if specific corporate events occur prior to the applicable maturity date, or if the Company elects to redeem the Notes, the Company will increase the conversion rate for a holder who elects to convert their notes in connection with such a corporate event or redemption in certain circumstances. It is the Company's current intent to settle the principal amount of the Notes in cash. During the three months ended October 31, 2018, the conditions allowing holders of the Notes to convert have not been met. The Notes were therefore not convertible during the three months ended October 31, 2018 and were classified as long-term debt on the Company's condensed consolidated balance sheets.

The Company may not redeem the Notes prior to June 20, 2021. On or after June 20, 2021, the Company may redeem for cash all or any portion of the Notes, at its option, if the last reported sale price of its Class A common stock was at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides a notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

In accounting for the issuance of the Notes, the Notes were separated into liability and equity components. The carrying amounts of the liability component was calculated by measuring the fair value of similar liabilities that do not have associated convertible features. The carrying amount of the equity component representing the conversion option was determined by deducting the fair value of the liability component from the par value of the respective Notes. This difference represents the debt discount that is amortized to interest expense over the respective terms of the Notes using the effective interest rate method. The carrying amount of the equity component representing the conversion option was \$84.2 million. The equity component was recorded in additional paid-in capital and is not remeasured as long as it continues to meet the conditions for equity classification.

In accounting for the debt issuance costs of \$8.8 million related to the Notes, the Company allocated the total amount incurred to the liability and equity components of the Notes based on their relative values. Issuance costs attributable to the liability component were \$6.3 million and will be amortized, along with the debt discount, to interest expense over the contractual term of the Notes at an effective interest rate of 7.03%. Issuance costs attributable to the equity component were \$2.5 million and are netted against the equity component representing the conversion option in additional paid-in capital.

MONGODDB, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The net carrying amount of the liability component of the Notes was as follows (in thousands):

	October 31, 2018	
Principal	\$	300,000
Unamortized debt discount		(80,197)
Unamortized debt issuance costs		(6,111)
Net carrying amount	\$	213,692

The net carrying amount of the equity component of the Notes was as follows (in thousands):

	October 31, 2018	
Debt discount for conversion option	\$	84,168
Issuance costs		(2,485)
Net carrying amount	\$	81,683

As of October 31, 2018, the total estimated fair value of the Notes was approximately \$403.2 million. The fair value was determined based on the closing trading price per \$100 of the Notes as of the last day of trading for the period. The fair value of the Notes is primarily affected by the trading price of the Company's common stock and market interest rates.

The following table sets forth the interest expense related to the Notes (in thousands):

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
Contractual interest expense	\$ 563	\$ —	\$ 763	\$ —
Amortization of debt discount	2,938	—	3,971	—
Amortization of issuance costs	174	—	234	—
Total	\$ 3,675	\$ —	\$ 4,968	\$ —

Capped Calls

In connection with the pricing of the Notes, the Company entered into privately negotiated capped call transactions with certain counterparties ("Capped Calls"). The Capped Calls each have an initial strike price of approximately \$68.15 per share, subject to certain adjustments, which corresponds to the initial conversion price of the Notes. The Capped Calls have initial cap prices of \$106.90 per share, subject to certain adjustments. The Capped Calls are expected to partially offset the potential dilution to the Company's Class A common stock upon any conversion of the Notes, with such offset subject to a cap based on the cap price. The Capped Calls cover, subject to anti-dilution adjustments, approximately 4.4 million shares of the Company's Class A common stock. The Capped Calls are subject to adjustment upon the occurrence of specified extraordinary events affecting the Company, including merger events, a tender offers and announcement events. In addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including nationalization, insolvency or delisting, changes in law, failures to deliver, insolvency filings and hedging disruptions. For accounting purposes, the Capped Calls are separate transactions, and not part of the terms of the Notes. As these transactions meet certain accounting criteria, the Capped Calls are recorded in stockholders' equity and are not accounted for as derivatives. The cost of \$37.1 million incurred to purchase the Capped Calls was recorded as a reduction to additional paid-in capital and will not be remeasured.

5. Commitments and Contingencies

Operating Leases

The Company has entered into non-cancelable operating leases, primarily related to rental of office space expiring through 2029. The Company recognizes operating lease costs on a straight-line basis over the term of the agreement, taking into account adjustments for market provisions such as free or escalating base monthly rental payments or deferred payment terms such as rent holidays that defer the commencement date of the required payments. The Company may receive renewal or expansion options, leasehold improvement allowances or other incentives on certain lease agreements. Total rent expense

MONGODDB, INC.**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

related to operating leases was \$2.6 million and \$2.3 million for the three months ended October 31, 2018 and 2017, respectively, and \$8.8 million and \$6.6 million for the nine months ended October 31, 2018 and 2017, respectively.

In December 2017, the Company entered into a lease agreement for 106,230 rentable square feet of office space (the “Premises”) to accommodate its growing employee base in New York City. The Company received delivery of the Premises on January 1, 2018 to commence construction to renovate the Premises. During the construction period, the Company had certain indemnification obligations related to the construction. As a result, the Company was considered, for accounting purposes only, the owner of the construction project under build-to-suit lease accounting. Accordingly, the Company recorded the estimated fair value of the leased space as an asset, capitalized the costs incurred to renovate the Premises, and recorded a corresponding liability that represented the lease financing obligation.

On September 4, 2018, construction of the Premises was completed. The Company evaluated whether to de-recognize the build-to-suit asset and liability under the “sale-leaseback” accounting guidance. The Company concluded that it lacks transferability of the risks and rewards of ownership, and therefore did not meet with the requirements for sale-leaseback accounting. Accordingly, the Company accounts for the New York City office lease as a financing arrangement.

The Company vacated its former office space as of September 30, 2018, prior to the expiration of the lease on December 31, 2018. The remaining rent payable, deferred rent and associated leasehold improvements for the former office space were expensed in full on September 30, 2018 and resulted in a charge of \$1.5 million recorded as a general and administrative operating expense in the Company’s unaudited condensed consolidated statement of operations. As of October 31, 2018, there was an associated liability of \$0.8 million, which the Company expects to be settled by January 31, 2019.

Other Commitments

During the nine months ended October 31, 2018, other than the issuance of the Notes, there have been no material changes outside the ordinary course of business to the Company’s contractual obligations and commitments from those disclosed in the 2018 Form 10-K. Refer to Note 4, *Convertible Senior Notes*, to the condensed consolidated financial statements for further details.

Legal Matters

From time to time, the Company has become involved in claims and other legal matters arising in the ordinary course of business. The Company investigates these claims as they arise. Although claims are inherently unpredictable, the Company is currently not aware of any matters that, if determined adversely to the Company, would individually or taken together have a material adverse effect on its business, financial position, results of operations or cash flows.

The Company accrues estimates for resolution of legal and other contingencies when losses are probable and estimable. From time to time, the Company is a party to litigation and subject to claims and threatened claims incident to the ordinary course of business, including intellectual property claims, labor and employment claims, breach of contract claims, and other matters.

Although the results of litigation and claims are inherently unpredictable, the Company believes that there was not at least a reasonable possibility that the Company had incurred a material loss with respect to such loss contingencies, as of October 31, 2018 and January 31, 2018, therefore, the Company has not recorded an accrual for such contingencies.

Indemnification

The Company enters into indemnification provisions under its agreements with other companies in the ordinary course of business, including customers, business partners, landlords, contractors and parties performing its research and development. Pursuant to these arrangements, the Company agrees to indemnify, hold harmless, and reimburse the indemnified party for certain losses suffered or incurred by the indemnified party as a result of the Company’s activities. The maximum potential amount of future payments the Company could be required to make under these agreements is not determinable. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the Company believes the fair value of these agreements is not material. The Company maintains commercial general liability insurance and product liability insurance to offset certain of the Company’s potential liabilities under these indemnification provisions.

The Company has entered into indemnification agreements with each of its directors and executive officers. These agreements require the Company to indemnify such individuals, to the fullest extent permitted by Delaware law, for certain liabilities to which they may become subject as a result of their affiliation with the Company.

MONGODDB, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

6. Equity Incentive Plans and Employee Stock Purchase Plan

Equity Incentive Plans

The Company adopted the 2008 Stock Incentive Plan (as amended, the “2008 Plan”) in 2008 and the 2016 Equity Incentive Plan (as amended, the “2016 Plan”) in 2016, primarily for the purpose of granting stock-based awards to employees, directors, and consultants. With the establishment of the 2016 Plan in December 2016, all shares available for grant under the 2008 Plan were transferred to the 2016 Plan. The Company no longer grants any stock-based awards under the 2008 Plan and any shares underlying stock options canceled under the 2008 Plan will be automatically transferred to the 2016 Plan.

Stock Options

The 2016 Plan provides for the issuance of incentive stock options to employees and nonstatutory stock options to employees, directors or consultants. The Board of Directors or a committee thereof determines the vesting schedule for all equity awards. Stock option awards generally vest over a period of four years with 25% vesting on the one-year anniversary of the award and the remainder vesting monthly over the next 36 months of the grantee’s service to the Company.

The following table summarizes stock option activity for the nine months ended October 31, 2018 (in thousands, except share and per share data and years):

	Shares	Weighted-Average Exercise Price Per Share	Weighted- Average Remaining Contractual Term (In Years)	Aggregate Intrinsic Value
Balance - January 31, 2018	12,637,435	\$ 7.63	7.72	\$ 246,227
Stock options exercised	(2,540,312)	6.92		
Stock options forfeited and expired	(640,584)	8.43		
Balance - October 31, 2018	9,456,539	7.76	7.04	697,319
Vested and exercisable - January 31, 2018	5,540,858	6.33	6.63	115,122
Vested and exercisable - October 31, 2018	5,377,483	\$ 6.89	6.29	\$ 401,189

Restricted Stock Units

The 2016 Plan provides for the issuance of restricted stock units (“RSUs”) to employees, directors and consultants. RSUs granted to new employees generally vest over a period of four years with 25% vesting on the one-year anniversary of the vesting start date and the remainder vesting quarterly over the next 12 quarters, subject to the grantee’s continued service to the Company. RSUs granted to existing employees generally vest quarterly over a period of four years, subject to the grantee’s continued service to the Company.

The following table summarizes RSU activity for the nine months ended October 31, 2018:

	Shares	Weighted-Average Grant Date Fair Value per RSU
Unvested - January 31, 2018	245,746	\$ 26.20
RSUs granted	1,718,364	47.90
RSUs vested	(138,812)	34.73
RSUs forfeited and canceled	(67,167)	39.25
Unvested - October 31, 2018	1,758,131	\$ 46.24

Employee Stock Purchase Plan

In October 2017, the Board of Directors adopted, and stockholders approved, the 2017 Employee Stock Purchase Plan (“ESPP”). A total of 1.5 million shares of the Company’s Class A common stock have been authorized for issuance under the 2017 ESPP. Subject to any plan limitations, the 2017 ESPP allows eligible employees to contribute, normally through payroll

MONGODDB, INC.
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deductions, up to 15% of their earnings for the purchase of the Company's Class A common stock at a discounted price per share. Except for the initial offering period, the ESPP provides for separate six-month offering periods. The Company's current offering period began June 18, 2018 and is expected to end December 14, 2018.

Unless otherwise determined by the Board of Directors or a committee thereof, the Company's Class A common stock will be purchased for the accounts of employees participating in the ESPP at a price per share that is the lesser of (1) 85% of the fair market value of the Company's Class A common stock on the first trading day of the offering period, which for the initial offering period is the price at which shares of the Company's Class A common stock were first sold to the public, or (2) 85% of the fair market value of the Company's Class A common stock on the last trading day of the offering period.

Stock-Based Compensation Expense

Total stock-based compensation expense recognized in the Company's interim unaudited condensed consolidated statements of operations is as follows (in thousands):

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
Cost of revenue—subscription	\$ 555	\$ 183	\$ 1,403	\$ 503
Cost of revenue—services	335	123	800	292
Sales and marketing	3,090	1,704	7,437	4,400
Research and development	3,131	1,505	8,241	4,072
General and administrative	3,153	2,184	8,969	5,799
Total stock-based compensation expense	<u>\$ 10,264</u>	<u>\$ 5,699</u>	<u>\$ 26,850</u>	<u>\$ 15,066</u>

7. Net Loss per Share

The Company calculates basic net loss per share by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period, less shares subject to repurchase. Diluted net loss per share is computed by giving effect to all potentially dilutive common stock equivalents outstanding for the period, including stock options and restricted stock units.

Prior to the Company's closing of its initial public offering in October 2017, the Company calculated basic and diluted net loss per share attributable to common stockholders in conformity with the two-class method required for companies with participating securities. The Company considered all series of redeemable convertible preferred stock to have been participating securities as the holders were entitled to receive non-cumulative dividends on a pari passu basis in the event that a dividend had been paid on common stock. For further details on the Company's historical participating securities, including warrants to purchase redeemable convertible preferred stock and common stock, refer to the Company's 2018 Form 10-K, specifically in Part II, Item 8, Financial Statements and Supplementary Data under the Notes to Consolidated Financial Statements.

Under the two-class method, basic net loss per share attributable to common stockholders was calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period, less shares subject to repurchase. The net loss attributable to common stockholders was not allocated to the redeemable convertible preferred stock as the holders of redeemable convertible preferred stock did not have a contractual obligation to share in losses. Diluted net loss per share attributable to common stockholders was computed by giving effect to all potentially dilutive common stock equivalents outstanding for the period. For purposes of this calculation, redeemable convertible preferred stock, stock options to purchase common stock, early exercised stock options, and warrants to purchase redeemable convertible preferred stock and common stock were considered common shares equivalents, but had been excluded from the calculation of diluted net loss per share attributable to common stockholders as their effect was anti-dilutive.

Basic and diluted net loss per share was the same for each period presented, as the inclusion of all potential common shares outstanding would have been anti-dilutive due to the net loss reported for each period presented.

The rights, including the liquidation and dividend rights, of the holders of Class A and Class B common stock are identical, except with respect to voting. Each share of Class A common stock is entitled to one vote per share and each share of Class B common stock is entitled to 10 votes per share. As the liquidation and dividend rights are identical for Class A and Class B common stock, the undistributed earnings are allocated on a proportionate basis and the resulting net loss per share will, therefore, be the same for both Class A and Class B common stock on an individual or combined basis.

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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders (in thousands, except share and per share data):

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
Numerator:				
Net loss	\$ (31,320)	\$ (24,216)	\$ (91,730)	\$ (69,985)
Denominator:				
Weighted-average shares used to compute net loss per share, basic and diluted	52,702,526	17,421,642	51,431,021	14,749,500
Net loss per share, basic and diluted	\$ (0.59)	\$ (1.39)	\$ (1.78)	\$ (4.74)

The shares underlying the conversion option in the Notes were not considered in the calculation of diluted net loss per share as the effect would have been anti-dilutive. Additionally, the Notes were not convertible as of October 31, 2018. Based on the initial conversion price, the entire outstanding principal amount of the Notes as of October 31, 2018 would have been convertible into approximately 4.4 million shares of the Company's Class A common stock. However, the Company expects to settle the principal amount of the Notes in cash. As a result, only the amount by which the conversion value exceeds the aggregate principal amount of the Notes (the "conversion spread") is considered in the diluted earnings per share computation under the treasury stock method. The conversion spread will have a dilutive impact on diluted net income per share when the average market price of the Company's Class A common stock for a given period exceeds the initial conversion price of \$68.15 per share for the Notes. In connection with the issuance of the Notes, the Company entered into Capped Calls, which were not included for purposes of calculating the number of diluted shares outstanding, as their effect would have been anti-dilutive. The Capped Calls are expected to partially offset the potential dilution to the Company's Class A common stock upon any conversion of the Notes.

During the three months ended October 31, 2018, the average market price of the Company's Class A common stock was \$71.66, which exceeded the initial conversion price. Although the Notes were not convertible as of October 31, 2018, the Company calculated the potentially dilutive effect of the conversion spread, which is included in the table below.

The following weighted-average outstanding potentially dilutive common shares were excluded from the computation of diluted net loss per share for the periods presented because the impact of including them would have been anti-dilutive.

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
Redeemable convertible preferred stock (as converted)	—	24,316,192	—	26,045,352
Redeemable convertible preferred stock warrants (as converted)	—	1,339	—	30,122
Common stock warrants	—	116,485	—	120,190
Stock options to purchase Class A common stock	3,046,631	3,258,405	3,315,885	2,207,524
Stock options to purchase Class B common stock	7,137,570	9,321,627	8,136,949	9,783,945
Unvested restricted stock units	1,707,692	54,550	1,265,391	54,550
Early exercised stock options	94,026	318,240	146,248	236,231
Shares underlying the conversion spread in the convertible senior notes	215,879	—	71,960	—

8. Income Taxes

The Company recorded a provision (benefit) related to income taxes of \$(33) thousand and \$0.3 million for the three months ended October 31, 2018 and 2017, respectively, and \$0.7 million and \$0.8 million for the nine months ended October 31, 2018 and 2017, respectively. The provision (benefit) related to income taxes was primarily due to foreign taxes offset by excess tax deductions in the United Kingdom with respect to stock option exercises. The calculation of income taxes is based

MONGODDB, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

upon the estimated annual effective tax rates for the year applied to the current period income (loss) before tax plus the tax effect of any significant unusual items, discrete events or changes in tax law.

On December 22, 2017, the 2017 Tax Cuts and Jobs Act (the “Tax Act”) was enacted into law and the new legislation significantly revised the Internal Revenue Code of 1986, as amended. The newly enacted federal income tax law, among other things, contains significant changes to corporate taxation, including the reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, limitation of the deduction for newly generated net operating losses (“NOLs”) to 80% of current year taxable income and elimination of NOL carrybacks and one-time taxation of offshore earnings at reduced rates regardless of whether they are repatriated. The Company is required to recognize the effect of these significant tax law changes in the period of enactment.

Also on December 22, 2017, the SEC staff issued Staff Accounting Bulletin No. 118, *Income Tax Accounting Implications of the Tax Cuts and Jobs Act* (“SAB 118”), which allows the Company to record provisional amounts during a measurement period not to extend beyond one year of the enactment date. Given the significant complexity of the Tax Act, anticipated guidance from the Internal Revenue Service about implementing the Tax Act, and the potential for additional guidance from the SEC or the FASB related to the Tax Act, the Company’s current estimates may be adjusted in future periods. The Company expects to complete its analysis during the quarter ending January 31, 2019, within the measurement period in accordance with SAB 118, and does not anticipate any material impact on its financial statements as a result of the Tax Act. The Company has not recorded any further adjustments during the nine months ended October 31, 2018. For information on the Company’s initial provisional estimates recorded during the year ended January 31, 2018, refer to the Company’s 2018 Form 10-K, specifically Part II, Item 8, Financial Statements and Supplementary Data under Note 11, *Income Taxes*, in the Notes to Consolidated Financial Statements.

For the Global Intangible Low-Taxed Income (“GILTI”) provisions of the Tax Act, the Company has not yet completed its assessment due to Internal Revenue Service regulations expected to be issued subsequent to October 31, 2018. The Company has elected an accounting policy to record GILTI as period costs if and when incurred.

The Company assesses uncertain tax positions in accordance with ASC 740-10, *Accounting for Uncertainties in Tax*. As of October 31, 2018, the Company’s net unrecognized tax benefits totaled \$4.3 million, none of which would impact the Company’s effective tax rate if recognized. The Company anticipates that the amount of reasonably possible unrecognized tax benefits that could decrease over the next 12 months due to the expiration of certain statutes of limitations and settlement of tax audits is not material to the Company’s interim unaudited condensed consolidated financial statements.

9. Segments and Geographic Revenue

The Company operates its business as one operating segment as it only reports financial information on an aggregate and consolidated basis to the Chief Executive Officer, who is the Company’s chief operating decision maker. The following table sets forth the Company’s total revenue by geographic area based on the customers’ location (in thousands):

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
Americas	\$ 42,889	\$ 28,045	\$ 112,477	\$ 74,965
Europe, Middle East and Africa	18,553	11,418	49,168	30,340
Asia Pacific	3,543	2,025	9,052	4,173
Total	\$ 64,985	\$ 41,488	\$ 170,697	\$ 109,478

Customers located in the United States accounted for 61% and 64% of total revenue for the three months ended October 31, 2018 and 2017, respectively, and 62% and 65% of total revenue for the nine months ended October 31, 2018 and 2017, respectively. Customers located in the United Kingdom accounted for 11% of total revenue for each of the three and nine months ended October 31, 2018 and 2017, respectively. No other country accounted for 10% or more of revenue for the periods presented.

As of October 31, 2018 and January 31, 2018, substantially all of the Company’s long-lived assets were located in the United States.

10. Subsequent Events

On October 9, 2018, the Company entered into an Agreement and Plan of Merger Agreement (the “Merger Agreement”) with Mammoth Merger Sub, Inc., a wholly-owned subsidiary of the Company (“Merger Sub”), ObjectLabs Corporation (“mLab”), and Shareholder Representative Services LLC, solely in its capacity as the Stockholder Agent, to acquire all of the issued and outstanding capital stock of mLab for a purchase price of \$68.0 million in cash, subject to working capital, cash, debt, transaction expenses and other closing adjustments. mLab is a privately held company, headquartered in San Francisco, California, that offers cloud database services.

Pursuant to the Merger Agreement, on November 1, 2018, Merger Sub was merged with and into mLab, and mLab continued as the surviving corporation and as a wholly-owned subsidiary of the Company. The Merger Agreement contains customary representations and warranties of each of the parties. The Merger Agreement also contains indemnification rights whereby the Company and its subsidiaries will be indemnified for breaches of or inaccuracies in counterparty representations, warranties, covenants and certain other matters (subject to certain limitations).

In connection with the transaction, certain executives of mLab have accepted offers of employment made by the Company to continue with mLab following the closing of the Merger.

ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

Unless the context otherwise indicates, references in this report to the terms “MongoDB,” “the Company,” “we,” “our” and “us” refer to MongoDB, Inc., its divisions and its subsidiaries. The following discussion and analysis of our financial condition and results of operations should be read in conjunction with (1) our interim unaudited condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and (2) the audited consolidated financial statements and the related notes and the discussion under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our Annual Report on Form 10-K for the fiscal year ended January 31, 2018 (the “2018 Form 10-K”). All information presented herein is based on our fiscal calendar, which ends January 31. Unless otherwise stated, references to particular years, quarters, months or periods refer to our fiscal years ended January 31 and the associated quarters, months and periods of those fiscal years.

This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements are often identified by the use of words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “project,” “will,” “would” or the negative or plural of these words or similar expressions or variations. Such forward-looking statements are subject to a number of risks, uncertainties, assumptions and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified herein, and those discussed in the section titled “Risk Factors,” set forth in Part 2, Item 1A of this Quarterly Report on Form 10-Q and our Quarterly Report on Form 10-Q filed with the SEC on September 7, 2018, in Part I, Item 1A of our 2018 Form 10-K and in our other filings with the SEC. You should not rely upon forward-looking statements as predictions of future events. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

Our corporate website is located at www.mongodb.com. We make available free of charge, on or through our corporate website, our annual, quarterly and current reports, and any amendments to those reports, as soon as reasonably practicable after electronically filing such reports with, or furnishing such reports to, the SEC. Information contained on our corporate website is not part of this Quarterly Report on Form 10-Q or any other report filed with or furnished to the SEC.

Overview

MongoDB is the leading modern, general purpose database platform. Our robust platform enables developers to build and modernize applications rapidly and cost-effectively across a broad range of use cases. Organizations can deploy our platform at scale in the cloud, on-premise, or in a hybrid environment. Software applications are redefining how organizations across industries engage with their customers, operate their businesses and compete with each other. A database is at the heart of every software application. As a result, selecting a database is a highly strategic decision that directly affects developer productivity, application performance and organizational competitiveness. Our platform addresses the performance, scalability, flexibility and reliability demands of modern applications while maintaining the strengths of legacy databases. Our business model combines the developer mindshare and adoption benefits of open source with the economic benefits of a proprietary software subscription business model.

We generate revenue primarily from sales of subscriptions, which accounted for 92% of our total revenue for both the three and nine months ended October 31, 2018, and 91% of our total revenue for both the three and nine months ended October 31, 2017. Our primary subscription package is MongoDB Enterprise Advanced, which represented 62% and 63% of our subscription revenue the three and nine months ended October 31, 2018, respectively, and 67% and 68% of our subscription revenue for the three and nine months ended October 31, 2017, respectively. MongoDB Enterprise Advanced is our comprehensive offering for enterprise customers that can be run in the cloud, on-premise or in a hybrid environment, and includes our proprietary database server, enterprise management capabilities, our graphical user interface, analytics integrations, technical support and a commercial license to our platform.

Many of our enterprise customers initially get to know our software by using Community Server, which is our free-to-download version of our database that includes the core functionality developers need to get started with MongoDB without all the features of our commercial platform. As a result, our direct sales prospects are often familiar with our platform and may have already built applications using our technology. We sell subscriptions directly through our field and inside sales teams, as well as indirectly through channel partners. Our subscription offerings are generally priced on a per server basis,

subject to a per server RAM limit. The majority of our subscription contracts are one year in duration and invoiced upfront, although a growing number of our customers are entering into multi-year subscriptions. When we enter into multi-year subscriptions, we typically invoice the customer on an annual basis.

We introduced MongoDB Atlas in June 2016. MongoDB Atlas is our cloud-hosted database-as-a-service (“DBaaS”) offering that includes comprehensive infrastructure and management of Community Server. During the three and nine months ended October 31, 2018, MongoDB Atlas revenue represented 22% and 18% of our total revenue, respectively, reflecting the continued growth of MongoDB Atlas since its introduction. We have experienced strong growth in both self-service customers of MongoDB Atlas and customers sold by our sales force. Self-service customers are charged monthly based on their usage while customers sold by our sales force typically sign annual commitments and pay in advance, for the entire year or monthly. Given our platform has been downloaded from our website more than 45 million times since February 2009 and over 15 million times in the last 12 months alone, our initial growth strategy for MongoDB Atlas is to convert developers and their organizations who are already using Community Server to customers of MongoDB Atlas, enabling them to enjoy the benefits of a managed offering.

We also generate revenue from services, which consist primarily of fees associated with consulting and training services. Revenue from services accounted for 8% of our total revenue for both the three and nine months ended October 31, 2018 and 9% of our total revenue for both the three and nine months ended October 31, 2017. We expect to continue to invest in our services organization as we believe it plays an important role in accelerating our customers’ realization of the benefits of our platform, which helps drive customer retention and expansion.

We believe the market for our offerings is large and growing. According to IDC, the worldwide database software market, which it refers to as data management software market, is forecast to be \$59 billion in 2018 and growing to approximately \$84 billion in 2022, representing a 9% compound annual growth rate. We have experienced rapid growth and have made substantial investments in developing our platform and expanding our sales and marketing footprint. We intend to continue to invest heavily to grow our business to take advantage of our market opportunity rather than optimizing for profitability or cash flow in the near term.

Key Factors Affecting Our Performance

Growing Our Customer Base

We are focused on continuing to grow our customer base. We have invested, and expect to continue to invest, heavily in our sales and marketing efforts and developer community outreach, which are critical to driving customer acquisition. As of October 31, 2018, we had over 8,300 customers across a wide range of industries and in over 100 countries, compared to over 4,900 customers as of October 31, 2017. All affiliated entities are counted as a single customer. As of October 31, 2018, we had over 1,700 customers that were sold through our direct sales force and channel partners, as compared to over 1,400 such customers as of October 31, 2017. These customers, which we refer to as our Direct Customers, accounted for 86% and 87% of our subscription revenue for the three and nine months ended October 31, 2018, respectively and 90% and 91% of our subscription revenue for the three and nine months ended October 31, 2017, respectively.

Increasing Adoption of MongoDB Atlas

MongoDB Atlas, our hosted cloud offering, is an important part of our run-anywhere strategy and allows us to generate revenue from Community Server, converting users who do not need all of the benefits of MongoDB Enterprise Advanced to customers. To accelerate adoption of this DBaaS offering, in 2017, we introduced tools to easily migrate existing users of our Community Server offering to MongoDB Atlas. We have also expanded our introductory offerings for MongoDB Atlas, including a free tier, which provides limited processing power and storage in order to drive usage and adoption of MongoDB Atlas among developers. Our MongoDB Atlas free tier offering is now available on all three major cloud providers (Amazon Web Services, Google Cloud Platform and, most recently, Microsoft Azure) in North America, Europe and Asia Pacific. In addition, MongoDB Atlas is available on AWS Marketplace, making it easier for AWS customers to buy and consume MongoDB Atlas. We have also begun to expand the functionality available in MongoDB Atlas beyond that of our Community Server offering. We expect this will drive further adoption of MongoDB Atlas as companies migrate mission-critical applications to the public cloud. The recent enterprise capabilities that we have introduced to MongoDB Atlas include advanced security features, enterprise-standard authentication and database auditing. We have invested significantly in MongoDB Atlas and our ability to drive adoption of MongoDB Atlas is a key component of our growth strategy. From its launch in June 2016, we have grown MongoDB Atlas to over 6,200 customers as of October 31, 2018, which includes new customers to MongoDB, as well as existing MongoDB Enterprise Advanced customers adding incremental MongoDB Atlas workloads.

Retaining and Expanding Revenue from Existing Customers

The economic attractiveness of our subscription-based model is driven by customer renewals and increasing existing customer subscriptions over time, referred to as land-and-expand. We believe that there is a significant opportunity to drive additional sales to existing customers, and expect to invest in sales and marketing and customer success personnel and activities to achieve additional revenue growth from existing customers. If an application grows and requires additional capacity, our customers increase their subscriptions to our platform. In addition, our customers expand their subscriptions to our platform as they migrate additional existing applications or build new applications, either within the same department or in other lines of business or geographies. Also, as customers modernize their information technology infrastructure and move to the cloud, they may migrate applications from legacy databases. Our goal is to increase the number of customers that standardize on our database within their organization, which can include offering centralized internal support or providing MongoDB-as-a-service internally. Over time, the average subscription amount for our Direct Customers has increased. In addition, self-service customers have begun to increase their consumption of our products, particularly MongoDB Atlas.

We monitor annualized recurring revenue (“ARR”) to help us measure our subscription performance. We define ARR as the subscription revenue we would contractually expect to receive from customers over the following 12 months assuming no increases or reductions in their subscriptions. ARR excludes self-service products, including MongoDB Atlas not sold on a commitment basis. ARR also excludes professional services. For customers who utilize our self-service offerings, we measure the annualized monthly recurring revenue (“MRR”), which is calculated by annualizing their usage of our self-serve products in the prior 30 days and assuming no increases or reductions in their usage. The number of customers with \$100,000 or greater in ARR and annualized MRR was 490 and 320 as of October 31, 2018 and 2017, respectively. Our ability to increase sales to existing customers will depend on a number of factors, including customers’ satisfaction or dissatisfaction with our products and services, competition, pricing, economic conditions or overall changes in our customers’ spending levels.

Components of Results of Operations

Revenue

Subscription Revenue. Our subscription revenue is comprised of term licenses and hosted as-a-service solutions. Subscriptions to term licenses include technical support and access to new software versions on a when-and-if available basis. Revenue from our term licenses is recognized ratably and is typically billed annually in advance. Revenue from our hosted as-a-service solutions is primarily generated on a usage basis and is billed either in arrears or paid up front.

Services Revenue. Services revenue is comprised of consulting and training services and is recognized over the period of delivery of the applicable services. We recognize revenue from services agreements as services are delivered if sold on a stand-alone basis and ratably over the contractual period if sold as a bundled element along with our subscriptions.

We expect our revenue may vary from period to period based on, among other things, the timing and size of new subscriptions, the rate of customer renewals and expansions, delivery of professional services, the impact of significant transactions and seasonality of or fluctuations in usage for our consumption-based customers. Certain of our services agreements are sold as a bundled element along with our subscriptions. In those cases, when the delivery of services commences later than the start date of the subscription, no revenue is recognized until the delivery of services commences. As long as all other revenue recognition criteria have been met, once delivery of services commences, we record a cumulative catch up of revenue that would have been recognized over the period from the beginning of the subscription term until the commencement of service delivery.

Cost of Revenue

Cost of Subscription Revenue. Cost of subscription revenue primarily includes personnel costs, including salaries, bonuses and benefits, and stock-based compensation, for employees associated with our subscription arrangements principally related to technical support and allocated shared costs, as well as depreciation and amortization. Our cost of subscription revenue for our hosted as-a-service solutions includes third-party cloud infrastructure and overhead. We expect our cost of subscription revenue to increase in absolute dollars as our subscription revenue increases and, depending on the results of MongoDB Atlas, our cost of subscription revenue may increase as a percentage of subscription revenue as well.

Cost of Services Revenue. Cost of services revenue primarily includes personnel costs, including salaries, bonuses and benefits, and stock-based compensation, for employees associated with our professional service contracts, as well as travel

costs, allocated shared costs and depreciation and amortization. We expect our cost of services revenue to increase in absolute dollars as our services revenue increases.

Gross Profit and Gross Margin

Gross Profit. Gross profit represents revenue less cost of revenue.

Gross Margin. Gross margin, or gross profit as a percentage of revenue, has been and will continue to be affected by a variety of factors, including the average sales price of our products and services, the mix of products sold, transaction volume growth and the mix of revenue between subscriptions and services. We expect our gross margin to fluctuate over time depending on the factors described above and, to the extent MongoDB Atlas revenue increases as a percentage of total revenue, our gross margin may decline as a result of the associated hosting costs of MongoDB Atlas.

Operating Expenses

Our operating expenses consist of sales and marketing, research and development and general and administrative expenses. Personnel costs are the most significant component of each category of operating expenses. Operating expenses also include allocated overhead costs for facilities, information technology and employee benefit costs.

Sales and Marketing. Sales and marketing expense consists primarily of personnel costs, including salaries, sales commission and benefits, bonuses and stock-based compensation. These expenses also include costs related to marketing programs, travel-related expenses and allocated overhead. Marketing programs consist of advertising, events, corporate communications, and brand-building and developer-community activities. We expect our sales and marketing expense to increase in absolute dollars over time as we expand our sales force and increase our marketing resources, expand into new markets and further develop our channel program.

Research and Development. Research and development expense consists primarily of personnel costs, including salaries, bonuses and benefits, and stock-based compensation. It also includes amortization associated with intangible acquired assets and allocated overhead. We expect our research and development expenses to continue to increase in absolute dollars, as we continue to invest in our platform and develop new products.

General and Administrative. General and administrative expense consists primarily of personnel costs, including salaries, bonuses and benefits, and stock-based compensation for administrative functions including finance, legal, human resources and external legal and accounting fees, as well as allocated overhead. We expect general and administrative expense to increase in absolute dollars over time as we continue to invest in the growth of our business and incur the costs of compliance associated with being a publicly traded company.

Other Income (Expense), net

Other income (expense), net consists primarily of interest income and gains and losses from foreign currency transactions.

Provision (Benefit) for Income Taxes

The provision (benefit) for income taxes consists primarily of state income taxes in the United States and income taxes in certain foreign jurisdictions in which we conduct business, offset by benefits recorded in the United Kingdom, principally related to stock option exercises, which generated tax deductions in excess of U.S. GAAP expenses. As of January 31, 2018, we had net operating loss ("NOL") carryforwards for federal, state and Irish income tax purposes of \$209.5 million, \$166.5 million and \$182.3 million, respectively, which begin to expire in the year ending January 31, 2028 for federal purposes and January 31, 2021 for state purposes if not utilized. Federal losses generated in the current year ending January 31, 2019 are eligible to be carried forward indefinitely. Ireland allows NOLs to be carried forward indefinitely. The deferred tax assets associated with the NOL carryforwards in each of these jurisdictions are subject to a full valuation allowance.

Three and Nine Months Ended October 31, 2018 Summary

For the three months ended October 31, 2018, our total revenue was \$65.0 million as compared to \$41.5 million for the three months ended October 31, 2017. Our net loss was \$31.3 million for the three months ended October 31, 2018 as compared to \$24.2 million for the three months ended October 31, 2017.

For the nine months ended October 31, 2018, our total revenue was \$170.7 million as compared to \$109.5 million for the nine months ended October 31, 2017. Our net loss was \$91.7 million for the nine months ended October 31, 2018 as compared to \$70.0 million for the nine months ended October 31, 2017.

Our operating cash flow was \$(32.5) million and \$(37.2) million for the nine months ended October 31, 2018 and 2017, respectively. Our free cash flow was \$(36.2) million and \$(38.9) million for the nine months ended October 31, 2018 and 2017, respectively. See the section titled “Liquidity and Capital Resources—Non-GAAP Free Cash Flow” below.

Results of Operations

The following tables set forth our results of operations for the periods presented in dollars and as a percentage of our total revenue:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
(unaudited, dollars in thousands)				
Consolidated Statements of Operations Data:				
Revenue:				
Subscription	\$ 60,090	\$ 37,885	\$ 157,588	\$ 99,603
Services	4,895	3,603	13,109	9,875
Total revenue	64,985	41,488	170,697	109,478
Cost of revenue:				
Subscription ⁽¹⁾	13,248	7,904	35,434	21,669
Services ⁽¹⁾	4,510	3,167	12,567	8,789
Total cost of revenue	17,758	11,071	48,001	30,458
Gross profit	47,227	30,417	122,696	79,020
Operating expenses:				
Sales and marketing ⁽¹⁾	38,116	28,050	109,885	77,087
Research and development ⁽¹⁾	23,179	16,588	63,254	45,414
General and administrative ⁽¹⁾	14,986	9,829	38,467	26,533
Total operating expenses	76,281	54,467	211,606	149,034
Loss from operations	(29,054)	(24,050)	(88,910)	(70,014)
Other income (expense), net	(2,299)	170	(2,140)	846
Loss before provision for income taxes	(31,353)	(23,880)	(91,050)	(69,168)
Provision for income taxes	(33)	336	680	817
Net loss	\$ (31,320)	\$ (24,216)	\$ (91,730)	\$ (69,985)

⁽¹⁾ Includes stock-based compensation expense as follows:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
(unaudited, dollars in thousands)				
Cost of revenue—subscription	\$ 555	\$ 183	\$ 1,403	\$ 503
Cost of revenue—services	335	123	800	292
Sales and marketing	3,090	1,704	7,437	4,400
Research and development	3,131	1,505	8,241	4,072
General and administrative	3,153	2,184	8,969	5,799
Total stock-based compensation expense	\$ 10,264	\$ 5,699	\$ 26,850	\$ 15,066

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2018	2017	2018	2017
(unaudited, dollars in thousands)				
Percentage of Revenue Data:				
Revenue:				
Subscription	92 %	91 %	92 %	91 %
Services	8 %	9 %	8 %	9 %
Total revenue	100 %	100 %	100 %	100 %
Cost of revenue:				
Subscription	20 %	19 %	21 %	20 %
Services	7 %	8 %	7 %	8 %
Total cost of revenue	27 %	27 %	28 %	28 %
Gross profit	73 %	73 %	72 %	72 %
Operating expenses:				
Sales and marketing	58 %	67 %	64 %	70 %
Research and development	36 %	40 %	37 %	42 %
General and administrative	23 %	24 %	23 %	24 %
Total operating expenses	117 %	131 %	124 %	136 %
Loss from operations	(45)%	(58)%	(52)%	(64)%
Other income (expense), net	(3)%	— %	(1)%	1 %
Loss before provision for income taxes	(48)%	(58)%	(53)%	(63)%
Provision for income taxes	— %	— %	— %	— %
Net loss	(48)%	(58)%	(53)%	(63)%

Comparison of the Three Months Ended October 31, 2018 and 2017

Revenue

	Three Months Ended October 31,		Change	
	2018	2017	\$	%
(unaudited, dollars in thousands)				
Subscription	\$ 60,090	\$ 37,885	\$ 22,205	59%
Services	4,895	3,603	1,292	36%
Total revenue	\$ 64,985	\$ 41,488	\$ 23,497	57%

Total revenue growth reflects increased demand for our platform and related services. Subscription revenue increased by \$22.2 million primarily due to \$13.5 million from sales to new customers. The remainder of the increase in subscription revenue resulted from sales to our existing customers. The increase in services revenue was driven primarily by an increase in sales of professional services to new customers.

Cost of Revenue, Gross Profit and Gross Margin Percentage

	Three Months Ended October 31,		Change	
	2018	2017	\$	%
(unaudited, dollars in thousands)				
Subscription cost of revenue	\$ 13,248	\$ 7,904	\$ 5,344	68%
Services cost of revenue	4,510	3,167	1,343	42%
Total cost of revenue	17,758	11,071	6,687	60%
Gross profit	\$ 47,227	\$ 30,417	\$ 16,810	55%
Gross margin	73%	73%		
Subscription	78%	79%		
Services	8%	12%		

The increase in subscription cost of revenue was primarily due to a \$4.1 million increase in third-party cloud infrastructure costs, including costs associated with the growth of MongoDB Atlas, and a \$0.5 million increase in personnel costs associated with increased headcount in our support organization. The increase in services cost of revenue was due to additional investments in headcount for our services organization to support global expansion of our business.

Overall gross margin remained flat. Our subscription margin declined by 1 percentage point due to the increased share of subscription revenue attributable to MongoDB Atlas and the increased third-party cloud infrastructure costs associated with supporting this growth. Our services gross margin is subject to fluctuations as a result of timing of sales of standalone consulting and training services and the timing of hiring, as well as the timing of revenue recognized for previously sold service agreements as a bundled element with subscriptions.

Operating Expenses

Sales and Marketing

	Three Months Ended October 31,		Change	
	2018	2017	\$	%
(unaudited, dollars in thousands)				
Sales and marketing	\$ 38,116	\$ 28,050	\$ 10,066	36%

The increase in sales and marketing expense included \$6.4 million from higher personnel costs and stock-based compensation, driven by an increase in our sales and marketing headcount to 449 as of October 31, 2018 from 376 as of October 31, 2017. In addition, we experienced increased payroll taxes associated with employee stock option exercises and restricted stock unit vesting as a result of being a publicly traded company. Commission expense increased \$2.5 million due to higher sales volume and greater headcount. An additional \$0.6 million of the increase in sales and marketing expense was attributable to higher spend on marketing programs, including for MongoDB Atlas.

Research and Development

	Three Months Ended October 31,		Change	
	2018	2017	\$	%
(unaudited, dollars in thousands)				
Research and development	\$ 23,179	\$ 16,588	\$ 6,591	40%

The increase in research and development expense was primarily driven by an increase in personnel costs and stock-based compensation as we increased our research and development headcount by 22%. In addition, we experienced increased payroll taxes associated with employee stock option exercises and restricted stock unit vesting as a result of being a publicly traded company.

General and Administrative

	Three Months Ended October 31,		Change	
	2018	2017	\$	%
	(unaudited, dollars in thousands)			
General and administrative	\$ 14,986	\$ 9,829	\$ 5,157	52%

The increase in general and administrative expense was primarily due to a 25% increase in general and administrative personnel headcount, in part driven by the increased compliance requirements of being a publicly-traded company, resulting in an increase of \$2.6 million from higher personnel costs and stock-based compensation. We also experienced increased payroll taxes associated with employee stock option exercises and restricted stock unit vesting as a result of being a publicly traded company. In addition, general and administrative expense included costs associated with the move of our New York City office, which resulted in a \$1.5 million acceleration of rent payable, deferred rent and associated leasehold improvements related to our former office space. General and administrative expense also included \$0.5 million of costs associated with our acquisition of mLab, which closed on November 1, 2018.

Other Income (Expense), net

	Three Months Ended October 31,		Change	
	2018	2017	\$	%
	(unaudited, dollars in thousands)			
Other income (expense), net	\$ (2,299)	\$ 170	\$ (2,469)	(1452)%

Other expense, net for the three months ended October 31, 2018 was primarily due to interest expense related to our 0.75% convertible senior notes issued in June and July 2018 (the "Notes"), as well as interest expense associated with our financing lease for our New York City office, which expense had previously been capitalized as a build-to-suit asset during the construction phase. These expenses were partially offset by an increase in interest income derived from our larger average cash equivalents and short-term investments balance during the three months ended October 31, 2018 as compared to prior-year period.

Provision for Income Taxes

	Three Months Ended October 31,		Change	
	2018	2017	\$	%
	(unaudited, dollars in thousands)			
Provision (benefit) for income taxes	\$ (33)	\$ 336	\$ (369)	-110%

The decrease in the provision for income taxes resulted in a benefit during the three months ended October 31, 2018, primarily due to an increase in stock option exercises, which generated excess tax deductions in the United Kingdom. The benefit for income taxes was partially offset by an increase in foreign taxes as we continued our global expansion.

Comparison of the Nine Months Ended October 31, 2018 and 2017

Revenue

	Nine Months Ended October 31,		Change	
	2018	2017	\$	%
	(unaudited, dollars in thousands)			
Subscription	\$ 157,588	\$ 99,603	\$ 57,985	58%
Services	13,109	9,875	3,234	33%
Total revenue	\$ 170,697	\$ 109,478	\$ 61,219	56%

Total revenue growth reflects increased demand for our platform and related services. Subscription revenue increased by \$58.0 million primarily due to \$26.6 million from sales to new customers. The remainder of the increase in subscription revenue resulted from sales to existing customers. The increase in services revenue was driven primarily by an increase in sales of professional services to new customers.

Cost of Revenue, Gross Profit and Gross Margin Percentage

	Nine Months Ended October 31,		Change	
	2018	2017	\$	%
(unaudited, dollars in thousands)				
Subscription cost of revenue	\$ 35,434	\$ 21,669	\$ 13,765	64%
Services cost of revenue	12,567	8,789	3,778	43%
Total cost of revenue	48,001	30,458	17,543	58%
Gross profit	\$ 122,696	\$ 79,020	\$ 43,676	55%
Gross margin	72%	72%		
Subscription	78%	78%		
Services	4%	11%		

The increase in subscription cost of revenue was primarily due to a \$9.8 million increase in third-party cloud infrastructure costs, including costs associated with the growth of MongoDB Atlas, as well as a \$2.3 million increase in personnel costs associated with increased headcount in our support organization. The increase in services cost of revenue was due to additional investments in headcount for our services organization to support global expansion of our business.

Overall gross margin and subscription gross margin remained flat. Our services gross margin for the nine months ended October 31, 2018 was impacted by the additional investments in headcount in anticipation of future revenue growth. Our services gross margin is subject to fluctuations as a result of timing of sales of standalone consulting and training services and the timing of hiring, as well as the timing of revenue recognized for previously sold service agreements as a bundled element with subscriptions.

Operating Expenses

Sales and Marketing

	Nine Months Ended October 31,		Change	
	2018	2017	\$	%
(unaudited, dollars in thousands)				
Sales and marketing	\$ 109,885	\$ 77,087	\$ 32,798	43%

The increase in sales and marketing expense included \$20.0 million from higher personnel costs and stock-based compensation, driven by an increase in our sales and marketing headcount to 449 as of October 31, 2018 from 376 as of October 31, 2017. In addition, we experienced increased payroll taxes associated with employee stock option exercises and restricted stock unit vesting as a result of being a publicly traded company. Sales and marketing expense also increased \$5.7 million due to an increase in commission expense from higher sales volume and larger headcount. An additional \$4.7 million of the increase in sales and marketing expense was attributable to increased travel and other expenses related to increased headcount, as well as higher spend on marketing programs, including for MongoDB Atlas.

Research and Development

	Nine Months Ended October 31,		Change	
	2018	2017	\$	%
(unaudited, dollars in thousands)				
Research and development	\$ 63,254	\$ 45,414	\$ 17,840	39%

The increase in research and development expense was primarily driven by an increase in personnel costs and stock-based compensation as we increased our research and development headcount by 22%. In addition, we experienced increased payroll taxes associated with employee stock option exercises and restricted stock unit vesting as a result of being a publicly traded company.

General and Administrative

	Nine Months Ended October 31,		Change	
	2018	2017	\$	%
	(unaudited, dollars in thousands)			
General and administrative	\$ 38,467	\$ 26,533	\$ 11,934	45%

The increase in general and administrative expense was primarily due to a 25% increase in general and administrative personnel headcount, in part driven by the increased compliance requirements of being a publicly-traded company, resulting in an increase of \$8.7 million from higher personnel costs and stock-based compensation. We also experienced increased payroll taxes associated with employee stock option exercises and restricted stock unit vesting as a result of being a publicly traded company. In addition, general and administrative expense included costs associated with the move of our New York City office, which resulted in a \$1.5 million acceleration of rent payable, deferred rent and associated leasehold improvements related to our former office space. General and administrative expense also included \$0.5 million of costs associated with our acquisition of mLab, which closed on November 1, 2018.

Other Income, net

	Nine Months Ended October 31,		Change	
	2018	2017	\$	%
	(unaudited, dollars in thousands)			
Other income, net	\$ (2,140)	\$ 846	\$ (2,986)	(353)%

The decrease in other income, net was primarily due to interest expense related to the Notes, as well as interest expense associated with our financing lease for our New York City office, which expense had previously been capitalized as a build-to-suit asset during the construction phase. These expenses were partially offset by an increase in interest income derived from our larger average cash equivalents and short-term investments balance during the nine months ended October 31, 2018 as compared to prior-year period.

Provision for Income Taxes

	Nine Months Ended October 31,		Change	
	2018	2017	\$	%
	(unaudited, dollars in thousands)			
Provision for income taxes	\$ 680	\$ 817	\$ (137)	-17%

The decrease in the provision for income taxes was primarily due to an increase in stock option exercises, which generated excess tax deductions in the United Kingdom and was recorded as an income tax benefit in the nine months ended October 31, 2018. The decrease in the provision was partially offset by an increase in foreign taxes as we continued our global expansion.

Liquidity and Capital Resources

As of October 31, 2018, we had cash, cash equivalents, short-term investments and restricted cash totaling \$522.7 million. Our cash and cash equivalents primarily consist of bank deposits and money market funds. Our short-term investments consist of U.S. government treasury securities.

In June 2018, we issued \$250.0 million aggregate principal amount of 0.75% convertible senior notes due 2024 (the "Notes") in a private placement and, in July 2018, we issued an additional \$50.0 million aggregate principal amount of the Notes pursuant to the exercise in full of the initial purchasers' option to purchase additional Notes. The total net proceeds from the sale of the Notes, after deducting initial purchase discounts and estimated debt issuance costs, were approximately \$291.1 million.

In connection with the pricing of the Notes, we entered into privately negotiated capped call transactions with certain counterparties (the "Capped Calls"). The Capped Calls are expected to partially offset the potential dilution to our Class A common stock upon any conversion of the Notes, with such offset subject to a cap based on the cap price. We used \$37.1 million of the proceeds from the Notes to purchase the Capped Calls, which was recorded as a reduction to additional paid-in

capital. For further discussion on the Capped Calls, please refer to Note 4, *Convertible Senior Notes*, in the Notes to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Previously, in October 2017, we closed our initial public offering of 9,200,000 shares of our Class A common stock at an offering price of \$24.00 per share, including 1,200,000 shares pursuant to the underwriters' option to purchase additional shares of our Class A common stock, resulting in net proceeds to us of \$201.6 million, after deducting underwriting discounts and commissions of \$15.5 million and offering expenses of \$3.9 million. Prior to our initial public offering, we financed our operations principally through private placements of our redeemable convertible preferred stock, which resulted in net proceeds to us of \$345.3 million.

We believe our existing cash and cash equivalents and short-term investments will be sufficient to fund our operating and capital needs for at least the next 12 months.

We have generated significant operating losses and negative cash flows from operations as reflected in our accumulated deficit and consolidated statements of cash flows. As of October 31, 2018, we had an accumulated deficit of \$535.5 million. We expect to continue to incur operating losses and negative cash flows from operations in the future and may require additional capital resources to execute strategic initiatives to grow our business. Our future capital requirements will depend on many factors including our growth rate, the timing and extent of spending to support development efforts, the expansion of sales and marketing and international operation activities, the timing of new subscription introductions, and the continuing market acceptance of our subscriptions and services. We may in the future enter into arrangements to acquire or invest in complementary businesses, services and technologies, including intellectual property rights. We may be required to seek additional equity or debt financing. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, operating results and financial condition would be adversely affected.

The following table summarizes our cash flows for the periods presented:

	Nine Months Ended October 31,	
	2018	2017
	(unaudited, dollars in thousands)	
Net cash used in operating activities	\$ (32,509)	\$ (37,169)
Net cash used in investing activities	(167,434)	(363)
Net cash provided by financing activities	\$ 277,622	\$ 211,203

Non-GAAP Free Cash Flow

To supplement our interim unaudited condensed consolidated financial statements, which are prepared and presented in accordance with generally accepted accounting principles in the United States ("GAAP"), we provide investors with the amount of free cash flow, which is a non-GAAP financial measure. Free cash flow represents net cash used in operating activities less capital expenditures and capitalized software development costs, if any. During the nine months ended October 31, 2018 and 2017, we did not capitalize any software development costs. Free cash flow is a measure used by management to understand and evaluate our liquidity and to generate future operating plans. The exclusion of capital expenditures and amounts capitalized for software development facilitates comparisons of our liquidity on a period-to-period basis and excludes items that we do not consider to be indicative of our liquidity. We believe that free cash flow is a measure of liquidity that provides useful information to our management, investors and others in understanding and evaluating the strength of our liquidity and future ability to generate cash that can be used for strategic opportunities or investing in our business in the same manner as our management and Board of Directors. Nevertheless, our use of free cash flow has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Further, our definition of free cash flow may differ from the definitions used by other companies and therefore comparability may be limited. You should consider free cash flow alongside our other GAAP-based financial performance measures, such as net cash used in operating activities, and our other GAAP financial results. The following table presents a reconciliation of free cash flow to net cash used in operating activities, the most directly comparable GAAP measure, for each of the periods indicated.

	Nine Months Ended October 31,	
	2018	2017
(unaudited, dollars in thousands)		
Net cash used in operating activities	\$ (32,509)	\$ (37,169)
Capital expenditures	(3,698)	(1,714)
Capitalized software	—	—
Free cash flow	\$ (36,207)	\$ (38,883)

Operating Activities

Cash used in operating activities during the nine months ended October 31, 2018 was \$32.5 million primarily driven by our net loss of \$91.7 million and was partially offset by non-cash charges of \$26.9 million for stock-based compensation, \$4.2 million for the amortization of our debt discount and issuance costs and \$3.3 million for depreciation and amortization. In addition, our deferred revenue increased \$16.5 million resulting from the overall growth of our sales and our expanding customer base and our accounts receivable decreased \$9.3 million due to cash collections. In addition, our accrued liabilities increased \$7.2 million, primarily from commissions accrued as of October 31, 2018. The cash inflows from our deferred revenue, accounts receivable and accrued liabilities were partially offset by an increase of \$5.5 million in deferred commissions and an increase of \$4.0 million in prepaid expenses.

Cash used in operating activities during the nine months ended October 31, 2017 was \$37.2 million primarily driven by our net loss of \$70.0 million and was partially offset by non-cash charges of \$15.1 million for stock-based compensation and \$2.8 million for depreciation and amortization. In addition, our cash used in operating activities was further offset by an increase of \$21.8 million in deferred revenue resulting from the overall growth of our sales and our expanding customer base, and an increase of \$2.2 million in accrued liabilities mainly related to offering costs not yet paid. The change in deferred revenue and accrued liabilities was partially offset by an increase of \$2.1 million in prepaid expenses and other current assets, and an increase of \$4.7 million in accounts receivable as a result of the overall increase in revenue and deferred revenue.

Investing Activities

Cash used in investing activities during the nine months ended October 31, 2018 and 2017 of \$167.4 million and \$0.4 million, respectively, resulted primarily from the purchases of marketable securities, net of maturities.

Financing Activities

Cash provided by financing activities during the nine months ended October 31, 2018 was \$277.6 million primarily due to the issuance of the Notes, net of the Capped Calls and issuance costs, as well as proceeds from the exercise of stock options and issuance of common stock under the Employee Stock Purchase Plan.

Cash provided by financing activities during the nine months ended October 31, 2017 was \$211.2 million primarily due to proceeds from our initial public offering completed in October 2017.

Seasonality

We have in the past and expect in the future to experience fluctuations in our revenue and sales across periods. Our recent growth and the ratable nature of our subscription revenue make these periodic fluctuations less apparent in our overall financial results.

Off Balance Sheet Arrangements

As of October 31, 2018, we did not have any relationships with any entities or financial partnerships, such as structured finance or special purpose entities that would have been established for the purpose of facilitating off-balance sheet arrangements or other purposes.

Contractual Obligations and Commitments

During the nine months ended October 31, 2018, other than the issuance of the Notes, there have been no material changes outside the ordinary course of business to our contractual obligations and commitments from those disclosed in our 2018 Form 10-K. Refer to Note 4, *Convertible Senior Notes*, and Note 5, *Commitments and Contingencies*, in our Notes to Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for further details.

Critical Accounting Policies and Estimates

Our financial statements are prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

There have been no material changes in our critical accounting policies from those disclosed in Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” of the 2018 Form 10-K.

Recent Accounting Pronouncements

See Note 2, *Summary of Significant Accounting Policies*, in our Notes to Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for a discussion of recent accounting pronouncements.

JOBS Act

As an “emerging growth company,” Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), allows us to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies. We have elected to use this extended transition period under the JOBS Act. As a result, our financial statements may not be comparable to the financial statements of public companies who are required to comply with the effective dates for new or revised accounting standards, which may make comparison of our financial statements to those of other public companies more difficult. As a result of our market capitalization as of July 31, 2018, we expect that we will cease to qualify as an emerging growth company as of January 31, 2019 and will no longer be able to take advantage of the extended transition period.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

We have operations both within the United States and internationally, and we are exposed to market risk in the ordinary course of business.

Interest Rate Risk

Our cash and cash equivalents primarily consist of bank deposits and money market funds, and our short-term investments consist of U.S. government treasury securities. As of October 31, 2018, we had cash, cash equivalents, restricted cash and short-term investments of \$522.7 million. The carrying amount of our cash equivalents reasonably approximates fair value, due to the short maturities of these instruments. The primary objectives of our investment activities are the preservation of capital, the fulfillment of liquidity needs and the fiduciary control of cash and investments. We do not enter into investments for trading or speculative purposes. Our investments are exposed to market risk due to a fluctuation in interest rates, which may affect our interest income and the fair market value of our investments. The effect of a hypothetical 10% increase or decrease in interest rates would not have had a material impact on the fair market value of our investments as of October 31, 2018.

In June 2018, we issued \$250.0 million aggregate principal amount of the Notes in a private placement and, in July 2018, we issued an additional \$50.0 million aggregate principal amount of the Notes pursuant to the exercise in full of the initial purchasers’ option to purchase additional Notes. The fair value of the Notes is subject to interest rate risk, market risk and other factors due to the conversion feature. The fair value of the Notes will generally increase as our Class A common stock price increases and will generally decrease as our Class A common stock price declines. The interest and market value changes affect the fair value of the Notes, but do not impact our financial position, cash flows or results of operations due to

the fixed nature of the debt obligation. Additionally, we carry the Notes at face value less unamortized discount on our balance sheet, and we present the fair value for required disclosure purposes only.

Foreign Currency Risk

Our sales contracts are primarily denominated in U.S. dollars, British pounds (“GBP”) or Euros (“EUR”). A portion of our operating expenses are incurred outside the United States and denominated in foreign currencies and are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the GBP and EUR. Additionally, fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our statement of operations. The effect of a hypothetical 10% change in foreign currency exchange rates applicable to our business would not have a material impact on our historical consolidated financial statements for the three and nine months ended October 31, 2018 and 2017. Given the impact of foreign currency exchange rates has not been material to our historical operating results, we have not entered into derivative or hedging transactions, but we may do so in the future if our exposure to foreign currency should become more significant. As our international operations grow, we will continue to reassess our approach to manage our risk relating to fluctuations in currency rates.

ITEM 4. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of October 31, 2018. Based on the evaluation of our disclosure controls and procedures as of October 31, 2018, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

From time to time, we may be subject to legal proceedings and claims in the ordinary course of business. We are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, results of operations, financial condition or cash flows. We have received, and may in the future continue to receive, claims from third parties asserting, among other things, infringement of their intellectual property rights. Future litigation may be necessary to defend ourselves, our partners and our customers by determining the scope, enforceability and validity of third-party proprietary rights, or to establish our proprietary rights. The results of any current or future litigation cannot be predicted with certainty, and regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

ITEM 1A. RISK FACTORS.

You should carefully consider the risks described in Part I, Item 1A, “Risk Factors” in the 2018 Form 10-K. These risks and uncertainties are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, also may become important factors that affect us. If any such risks materialize, our business, financial condition and results of operations could be materially harmed and the trading price of our Class A common stock could decline. There have been no material changes to the risk factors described in the 2018 Form 10-K, except as described in our Quarterly Report on Form 10-Q filed with the SEC on September 7, 2018 and as set forth below.

We could be negatively impacted if the GNU Affero General Public License Version 3, the Server Side Public License and other open source licenses under which some of our software is licensed are not enforceable.

The versions of Community Server released prior to October 16, 2018 are licensed under the GNU Affero General Public License Version 3 (the “AGPL”). This license states that any program licensed under it may be copied, modified and distributed provided certain conditions are met. On October 16, 2018, we issued a new software license, the Server Side Public License (“SSPL”), for all versions of Community Server released after that date. The SSPL builds on the spirit of the AGPL, but includes an explicit condition that any organization using Community Server to offer MongoDB as a service must open source the software that it uses to offer such service. It is possible that a court would hold the SSPL or AGPL to be unenforceable. If a court held either license or certain aspects of either license to be unenforceable, others may be able to use our software to compete with us in the marketplace in a manner not subject to the restrictions set forth in the SSPL or AGPL.

We offer Community Server under an open source license, which could negatively affect our ability to monetize and protect our intellectual property rights.

We make our Community Server offering available under either the SSPL (for versions released after October 16, 2018) or the AGPL (for versions released prior to October 16, 2018). Community Server is a free-to-download version of our database that includes the core functionality developers need to get started with MongoDB but not all of the features of our commercial platform. Both the SSPL and the AGPL grant licensees broad freedom to view, use, copy, modify and redistribute the source code of Community Server provided certain conditions are met. Some commercial enterprises consider SSPL- or AGPL-licensed software to be unsuitable for commercial use because of the “copyleft” requirements of those licenses. However, some of those same commercial enterprises do not have the same concerns regarding using the software under the SSPL or AGPL for internal purposes. As a result, these commercial enterprises may never convert to paying customers of our platform. Anyone can obtain a free copy of Community Server from the Internet, and we do not know who all of our SSPL or AGPL licensees are. Competitors could develop modifications of our software to compete with us in the marketplace. We do not have visibility into how our software is being used by licensees, so our ability to detect violations of the SSPL or AGPL is extremely limited.

In addition to Community Server, we contribute other source code to open source projects under open source licenses and release internal software projects under open source licenses, and anticipate doing so in the future. Because the source code for Community Server and any other software we contribute to open source projects or distribute under open source licenses is publicly available, our ability to monetize and protect our intellectual property rights with respect to such source code may be limited or, in some cases, lost entirely.

Our decision to offer Community Server under a new license, the Server Side Public License, may harm adoption of Community Server.

To encourage developer usage, familiarity and adoption of our platform, we offer Community Server as an open source offering, analogous to a “freemium” offering. On October 16, 2018, we announced that we were changing the license for Community Server from the AGPL to a new software license, the SSPL. The SSPL builds on the spirit of the AGPL, but includes an explicit condition that any organization attempting to exploit MongoDB as a service must open source the software that it uses to offer such service. Since the SSPL is a new license and has not been interpreted by any court, nor has it been certified or approved by any open source or free software organization, developers and the companies they work for may be hesitant to adopt Community Server because of uncertainty around the provisions of the SSPL and how it will be interpreted and enforced. This may negatively impact adoption of Community Server, which in turn could lead to reduced brand and product awareness, ultimately leading to a decline in paying customers, and our ability to grow our business or achieve profitability may be harmed.

We may be unable to integrate acquired businesses and technologies successfully or achieve the expected benefits of such acquisitions.

On November 1, 2018, we acquired ObjectLabs Corporation (“mLab”), a privately held company, headquartered in San Francisco, California, that offers cloud database services. The acquisition of mLab and integration of mLab into our business involves numerous risks, any of which could harm our business, including:

- the acquisition of mLab may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by stockholders and third parties, including intellectual property claims and disputes, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition;
- we may encounter difficulties or unforeseen expenditures in integrating the mLab business, technologies, products, personnel or operations, particularly if key mLab personnel decide not to work for us in the near future;
- we may not be able to realize anticipated synergies;
- we may not be successful in migrating mLab customers to MongoDB Atlas and we may experience increased customer churn as a result of the disruption from switching platforms;
- mLab customers may not increase their usage or spend with us as we expect or at all;
- we may encounter challenges integrating the mLab employees into our company culture; and
- we may encounter difficulties in, or may be unable to, successfully sell mLab’s products.

The occurrence of any of these risks could have a material and adverse effect on our business, results of operations and financial condition.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

(a) Recent Sales of Unregistered Equity Securities

None.

(b) Use of Proceeds

On October 18, 2017, our registration statement on Form S-1 (File No. 333-220557) for our initial public offering (“IPO”) was declared effective by the SEC. The net proceeds to us from our IPO, after deducting underwriting discounts and commission of \$15.5 million and offering expenses of \$3.9 million, were \$201.6 million. There has been no material change in the planned use of proceeds from our IPO from those disclosed in the final prospectus for our IPO dated as of October 18, 2017 and filed with the SEC pursuant to Rule 424(b)(4) on October 19, 2017.

(c) Issuer Purchases of Equity Securities

The table below provides information with respect to repurchases of shares of our Class A common stock during the three months ended October 31, 2018:

Period	Total number of shares purchased⁽¹⁾	Average price paid per share
August 1 to August 31, 2018	938	\$ 8.40
September 1 to September 30, 2018	—	\$ —
October 1 to October 31, 2018	—	\$ —

(1) Under certain stock option grant agreements between us and our employees, in the event an employee's service with us terminates, we have the right to repurchase shares of Class A common stock that were acquired by such employee pursuant to the exercise of stock options that have not yet vested as of such employee's termination date. Pursuant to these agreements, we may repurchase all or any unvested shares at the lower of (i) the fair market value of such shares (as determined under our 2016 Amended and Restated Equity Incentive Plan) on the date of repurchase, or (ii) the price equal to the employee's exercise price for such shares. The shares set forth above were repurchased pursuant to this right of repurchase.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

ITEM 5. OTHER INFORMATION.

Not applicable.

ITEM 6. EXHIBITS.

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
2.1†	Agreement and Plan of Merger, dated as of October 9, 2018, by and among the Company, Mammoth Merger Sub, Inc., ObjectLabs Corporation and Shareholder Representative Services LLC.					x
3.1	Amended and Restated Certificate of Incorporation of Registrant	8-K	001-38240	3.1	10/25/2017	
3.2	Amended and Restated Bylaws of Registrant	S-1	333-220557	3.4	9/21/2017	
4.1	Form of Class A common stock certificate of Registrant	S-1/A	333-220557	4.1	10/6/2017	
4.2	Fifth Amended and Restated Investors' Rights Agreement by and among the Registrant and certain of its stockholders, dated October 2, 2013	S-1	333-220557	4.2	9/21/2017	
4.3	Indenture, dated as of June 28, 2018, by and between the Registrant and U.S. Bank National Association, as Trustee	8-K	001-38240	4.1	6/28/2018	
4.4	Form of Global Note, representing MongoDB, Inc.'s 0.75% Convertible Senior Notes due 2024 (included as Exhibit A to the Indenture filed as Exhibit 4.3)	8-K	001-38240	4.2	6/28/2018	
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					x
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					x
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					x
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					x
101.INS	XBRL Instance Document					
101.SCH	XBRL Taxonomy Extension Schema Document					
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					
101.LAB	XBRL Taxonomy Extension Label Linkbase Document					
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					

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- † Certain schedules and exhibits to this agreement have been omitted in accordance with Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.
- * This certification is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

MONGODB, INC.

MAMMOTH MERGER SUB, INC.

OBJECTLABS CORPORATION

AND

SHAREHOLDER REPRESENTATIVE SERVICES, LLC,

AS STOCKHOLDERS' AGENT

OCTOBER 9, 2018

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- Schedule B Outstanding Account Receivables
- Schedule C Notices, Consents, Waivers and Approvals
- Schedule D Contracts to be Terminated
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EXHIBITS

- Exhibit A Joinder Agreement
- Exhibit B Company Stockholder Consent
- Exhibit C Working Capital Methodology

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “*Agreement*”) is made and entered into as of October 9, 2018 (the “*Agreement Date*”), by and among **MONGODB, INC.**, a Delaware corporation (“*Acquirer*”), **MAMMOTH MERGER SUB, INC.**, a Delaware corporation and wholly owned subsidiary of Acquirer (“*Sub*”), **OBJECTLABS CORPORATION**, a Delaware corporation (the “*Company*”), and **SHAREHOLDER REPRESENTATIVE SERVICES LLC**, a Colorado limited liability company, solely in its capacity as the representative, agent and attorney-in-fact of the Effective Time Holders (the “*Stockholders’ Agent*”).

RECITALS

A. The board of directors of the Company (the “*Company Board*”) and the boards of directors of Sub and Acquirer (or, with respect to Acquirer, a duly authorized committee of its board of directors) have determined that it would be advisable and in the best interests of the securityholders of their respective companies that Sub merge with and into the Company (the “*Merger*”), with the Company to survive the Merger and to become a wholly owned subsidiary of Acquirer, on the terms and subject to the conditions set forth in this Agreement, and, in furtherance thereof, have approved the Merger, this Agreement and the other transactions contemplated by this Agreement.

B. Acquirer, Sub and the Company desire to make certain representations, warranties, covenants and other agreements in connection with the Merger as set forth herein.

C. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquirer to enter into this Agreement, the Founders are executing (i) employee offer letters with Acquirer, together with Acquirer’s customary proprietary inventions assignment agreement (collectively, the “*Offer Packages*”) and (ii) restrictive covenant agreements (the “*Restrictive Covenant Agreements*”), in each case, to become effective upon the Closing in accordance with its terms.

D. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquirer to enter into this Agreement, each Founder, on the one hand, and Acquirer, on the other hand, are each executing a Consideration Holdback Agreement (the “*Founder Holdback Agreements*”), in each case, to become effective upon the Closing in accordance with its terms.

E. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquirer to enter into this Agreement, the Company is delivering to Acquirer an executed joinder agreement substantially in the form attached hereto as Exhibit A (the “*Joinder Agreement*”) and an executed written consent substantially in the form attached hereto as Exhibit B (the “*Company Stockholder Consent*”) approving the Merger and adopting this Agreement, in each case, from the Company Stockholders listed on Schedule A.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and other agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as set forth herein.

Article I

THE MERGER

1.1 Certain Definitions.

(a) As used in this Agreement, the following terms shall have the meanings indicated below:

“Acquirer Fundamental Representations” means the representations and warranties set forth in Section 3.1 (Organization and Good Standing), Subsections (a) and (b) of Section 3.2 (Authority).

“Acquisition Proposal” shall mean, with respect to the Company or its Subsidiary, any agreement, offer, discussion, proposal or bona fide indication of interest (other than this Agreement or any other offer, proposal or indication of interest by Acquirer), or any public announcement of intention to enter into any such agreement or of (or intention to make) any offer, proposal or bona fide indication of interest, relating to, or involving an Acquisition Transaction.

“Acquisition Transaction” shall mean (i) the purchase, issuance, grant, or disposition of (a) any capital stock or other securities of the Company or its Subsidiary, other than pursuant to equity incentives previously granted under the Company Equity Plan, or in the normal course in connection with the issuance of equity to existing or new employees or other service providers, or (b) of all or any part of the assets of the Company, other than the sale of products and services or license of intellectual property in connection therewith (in each case, in the ordinary course of business) or (ii) any merger, consolidation, business combination or similar transaction involving the Company or its Subsidiary, in each case other than with Acquirer or its Affiliates.

“Affiliate” has the meaning set forth in Rule 144 promulgated under the Securities Act.

“Business Day” means a day (i) other than Saturday or Sunday and (ii) on which commercial banks are open for business in San Francisco, California.

“Calculation Time” means 11:59 p.m. (Pacific time) on the day immediately prior to the Closing Date.

“California Law” or **“CGCL”** means the General Corporation Law of the State of California.

“Cash” means, without duplication, (i) cash and cash equivalents (marketable securities and short term investments and checks received by the Company or its Subsidiary prior to the Closing) of the Company and its Subsidiary calculated in accordance with GAAP, plus (ii) the Outstanding Account Receivables (solely to the extent received by the Surviving Corporation, the Company or its Subsidiary as of 11:59 PM on November 10, 2018), minus (iii) any customer overpayment liabilities or obligations (which, for the avoidance of doubt, shall not include (x) deferred revenue or (y) customer prepayments, but solely to the extent not resulting in a customer overpayment liability or obligation), in each case, calculated as of the Calculation Time; provided that **“Cash”** shall not include any (a) cash and cash equivalents that would be deemed “restricted cash” determined in accordance with GAAP or (b) uncleared check issued by the Company or its Subsidiary but not yet presented for payment by the recipient as of the Calculation Time.

“Closing Per Share Amount” means the Per Share Amount, minus the Escrow Per Share Amount, minus the Expense Fund Per Share Amount, minus, solely with respect to a share of Company Common Stock held by a Founder, the Founder Holdback Per Share Amount.

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

“Company Accounting Principles” shall mean GAAP applied on a basis consistent with the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the balance sheet included in the Financial Statements; provided that, if there is a conflict between GAAP and such methodologies, practices, estimation techniques, assumptions and principles, GAAP shall control.

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

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

“Company Equity Plans” means each equity award plan, program or arrangement of the Company, collectively, including the Company’s 2011 Equity Incentive Plan, as amended.

“Company Fundamental Representations” means the representations and warranties set forth in Section 2.1 (Organization, Standing and Power), 2.2 (Capital Structure), subsections (a) and (b) of Section 2.3 (Authority) and Section 2.12 (Taxes).

“Company Indebtedness” means, with respect to the Company and its Subsidiary at any date of determination, without duplication: (i) all obligations for borrowed money; (ii) all obligations in respect of letters of credit, to the extent actually then drawn; (iii) any accrued interest related to any of the foregoing; (iv) all obligations required to be treated as capital leases in accordance with GAAP; (v) indebtedness referred to above that is directly or indirectly guaranteed by the Company or its Subsidiary or secured by an Encumbrance upon any property, right or asset of, the Company or its Subsidiary; (vi) obligations for deferred compensation, post-retirement welfare benefits and unfunded or underfunded pensions; and (vii) any make-whole amounts, expenses, fees, penalties or premiums payable in connection with the repayment of any of the indebtedness described in clauses (i) through (vi). For the avoidance of doubt, Company Indebtedness shall not include any Company Transaction Expenses and shall be calculated as of immediately prior to the Closing.

“Company Optionholders” means the holders of outstanding Company Options.

“Company Options” means options to purchase shares of Company Common Stock.

“Company Preferred Stock” means the Company Series A Stock and the Company Series B Stock.

“Company Securityholders” means, collectively, the Company Stockholders and the Company Optionholders.

“Company Series A Stock” means the Series A Preferred Stock, par value \$0.00001 per share, of the Company.

“Company Series B Stock” means the Series B Preferred Stock, par value \$0.00001 per share, of the Company.

“Company Stockholders” means the holders of shares of outstanding Company Capital Stock.

“Company Transaction Expenses” means, all fees and expenses, including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties (including holders of Company Capital Stock and Company Options) incurred by or on behalf of the Company or its Subsidiary at or prior to the Effective Time in connection with the negotiation, consummation and/or effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, including, without limitation, (i) any payments owed by the Company or its Subsidiary as a brokerage or finders’ fee, agents’ commission or any similar charge, in connection with the Merger, (ii) any bonus, change-in-control payments or similar payment obligations of the Company with “single-trigger” provisions that are triggered at and as of the consummation of the transactions contemplated hereby that become due and payable in connection therewith, (iii) the cost of the D&O Insurance, and (iv) Transaction Payroll Taxes. For the avoidance of doubt, Company Transaction Expenses shall be calculated as of immediately prior to the Closing (except with respect to Transaction Payroll Taxes, which shall be calculated as of 11:59 p.m. local time for each location of the Company or its Subsidiary, on the Closing Date).

“Contract” means any written or oral legally binding contract, agreement, instrument, commitment or undertaking of any nature (including leases, licenses, mortgages, notes, guarantees, sublicenses, subcontracts, letters of intent and purchase orders) as of the Agreement Date.

“Delaware Law” means the General Corporation Law of the State of Delaware.

“Designated Exchange Rate” means, in respect of any date, the rate of exchange from the applicable foreign currency to Dollars as published by the Wall Street Journal at http://online.wsj.com/mdc/public/page/2_3021-forex.html for the end of the trading day prior to such date.

“Dissenting Shares” means any shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and in respect of which appraisal or dissenters’ rights shall have been perfected (and not withdrawn) in accordance with Delaware Law or California Law in connection with the Merger.

“Dollars” or **“\$,”** when used in this Agreement or any other agreement or document contemplated hereby, means United States dollars unless otherwise stated.

“Downward Closing Working Capital Adjustment” means the amount, if any, by which Estimated Working Capital is less than the Target Working Capital; provided, there shall be no such adjustment if the Estimated Working Capital is greater than or equal to the Target Working Capital Minimum.

“Effective Time Holders” means the Company Stockholders as of immediately prior to the Effective Time (other than a holder of solely shares of Company Capital Stock that constitute and remain Dissenting Shares).

“EMI Code” has the meaning given to in in ITEPA.

“Employee Costs” means any costs or Liabilities, at or following the Closing, resulting from (i) the termination of the Contracts between the Company and any PEO in accordance with the terms of such Contracts as they exist as of the Effective Time; (ii) providing or otherwise arranging for COBRA continuation coverage for former employees of the Company (as of the Effective Time) under a group health plan of a PEO or a group health plan of Acquirer or any of its Affiliates, but, in each case, solely to the extent the reason for providing or otherwise arranging for such COBRA continuing coverage results from the termination of a Contract between the Company and any PEO in accordance with the terms of such Contracts as they exist as of the Effective Time; and (iii) the aggregate amount of multi-year, annual, quarterly, and/or periodic bonuses and accrued paid time off, and other non-equity incentives for current or former employees, executive officers, directors or other individual service providers of the Company or any of its Subsidiaries in respect of any year prior to or in which the Closing occurs, or performance period prior to the Closing (including the Transaction Payroll Taxes in respect thereof).

“Encumbrance” means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest, title retention device, conditional sale or other security arrangement, collateral assignment, claim, charge, adverse claim of title, ownership or right to use, restriction, exclusive license or other encumbrance of any kind in respect of such asset (including any restriction on (i) the voting of any security or the transfer of any security or other asset, (ii) the receipt of any income derived from any asset, (iii) the use of any asset and (iv) the possession, exercise or transfer of any other attribute of ownership of any asset).

“Environmental and Safety Laws” means any federal, state or local laws, ordinances, codes, regulations, rules, policies and orders that are intended to assure the protection of the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list or define air, water, groundwater, solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants, or that are intended to assure the safety of employees, workers or other Persons, including the public.

“Escrow Agent” means SunTrust Bank.

“Escrow Cash” means an amount of cash equal to \$10,200,000.

“Escrow Per Share Amount” means an amount of cash equal to the Escrow Cash divided by the Outstanding Company Capital Stock.

“Excess Cash Amount” means any Cash in excess of the Minimum Cash Amount.

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

“Expense Fund Per Share Amount” means an amount of cash equal to the Expense Fund Amount divided by the Outstanding Company Capital Stock.

“Facilities” means all buildings and improvements on the Property.

“Founder Holdback Amount” means, with respect to each Founder, an amount equal to sixty percent (60%) of the consideration that such Founder is entitled to in respect of the Company Capital Stock and Vested Company Options held by such Founder at the Effective Time pursuant to Section 1.9.

“Founder Holdback Per Share Amount” means, with respect to each Founder, their respective Founder Holdback Amount divided by the total number of shares of Company Common Stock held by the Founder as of the Effective Time.

“Founders” means Angela Shulman and Will Shulman.

“Fully-Diluted Company Stock” means the sum, without duplication, of the aggregate number of shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time (on an as-converted to Company Common Stock basis) or issuable upon the exercise of Vested Company Options or other direct or indirect rights to acquire shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time (solely to the extent vested and exercisable); *provided* that all Unvested Company Options and other direct or indirect rights to acquire shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time (to the extent unvested and/or unexercisable) and that are cancelled at the Effective Time pursuant to the first sentence of Section 1.9(a) (v) shall be excluded from the calculation of the Fully-Diluted Company Stock.

“GAAP” means United States generally accepted accounting principles applied on a consistent basis.

“Governmental Entity” means any supranational, national, state, municipal, local or foreign government, any court, tribunal, arbitrator, administrative agency, commission or other governmental official, authority or instrumentality, in each case whether domestic or foreign, any stock exchange or similar self-regulatory organization or any quasi-governmental or private body exercising any regulatory, Taxing or other governmental or quasi-governmental authority.

“Group” shall have the definition ascribed to such term under Section 13(d) of the Exchange Act, the rules and regulations thereunder and related case law.

“Hazardous Materials” means any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive substance, material or waste defined in or regulated under any Environmental and Safety Laws, but excludes office and janitorial supplies properly and safely maintained.

“Indemnifiable Company Indebtedness” means any Company Indebtedness existing at the Effective Time that has not been taken into account in the calculation of Final Company Indebtedness. All Indemnifiable Company Indebtedness shall constitute **“Indemnifiable Damages”** for purposes of Article VIII without regard to the Threshold.

“Indemnifiable Company Transaction Expenses” means any Company Transaction Expenses that have not been taken into account in the calculation of Final Company Transaction Expenses. All Indemnifiable Company Transaction Expenses shall constitute **“Indemnifiable Damages”** for purposes of Article VIII without regard to the Threshold.

“ITEPA” means Income Tax (Earnings and Pensions) Act 2003.

“Knowledge” means, with respect to any fact, circumstance, event or other matter in question, the knowledge of such fact, circumstance, event or other matter after reasonable inquiry of the individuals set forth on Section 1 of Schedule G attached hereto.

“Legal Requirements” means any federal, state, foreign, local, municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity and any orders, writs, injunctions, awards, judgments and decrees applicable to the Company or to any of their respective assets, properties or businesses.

“Liabilities” means all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, asserted or unasserted, known or unknown, including those arising under any Legal Requirement and those arising under any Contract.

“Material Adverse Effect” with respect to any entity means any change, event, violation, inaccuracy, circumstance or effect (each, an **“Effect”**) that, individually or taken together with all other Effects, and regardless of whether or not such Effect constitutes a breach of the representations or warranties made by such entity in this Agreement, is, or is reasonably likely to, (i) be materially adverse in relation to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations or results of operations of such entity and its subsidiaries, taken as a whole, or (ii) materially impede or delay such entity’s ability to consummate the transactions contemplated by this Agreement in accordance with its terms and applicable Legal Requirements, except in each case, to the extent that any such Effect directly results from and none of the following, either alone or in combination, shall be taken into account in determining whether there has been or will be a Material Adverse Effect: (A) changes in general economic conditions, so long as the effects do not disproportionately impact the Company and its Subsidiary (taken as a whole) relative to other participants in the industries in which the Company and its Subsidiary participates, (B) changes affecting the industry generally in which the Company and its Subsidiary (taken as a whole) participates, so long as the effects do not disproportionately impact the Company and its Subsidiary (taken as a whole) relative to other participants in the industries in which the Company and its Subsidiary participates, (C) changes in GAAP or applicable Legal Requirements after the Agreement Date, so long as the effects do not disproportionately impact the Company and its Subsidiary (taken as a whole) relative to other participants in the industries in which the Company or its Subsidiary participates, (D) the taking or not taking of any action contemplated by this Agreement and the transactions contemplated hereby or at the request of Acquirer, (E) the announcement and pendency of this Agreement and the transactions contemplated hereby and (F) the failure, in and of itself, to achieve any projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items, *provided* that this clause (F) shall not prevent a determination that any Effect underlying such failure has resulted in a Material Adverse Effect.

“Minimum Cash Amount” means \$1,000,000.

“Outstanding Account Receivables” means the account receivables set forth on Schedule B.

“Outstanding Company Capital Stock” means the sum, without duplication, of the aggregate number of shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time (on an as-converted to Company Common Stock basis).

“Per Share Amount” means an amount of cash equal to the (i) sum of Total Merger Consideration and the aggregate exercise price of all in-the-money Vested Company Options (ii) divided by the Fully-Diluted Company Stock.

“Permitted Encumbrances” means (i) statutory liens for Taxes that are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings for which adequate reserves have been established, (ii) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (iii) mechanics’, carriers’, workers’, repairers’ and similar liens arising or incurred in the ordinary course of business for amounts which are not yet delinquent or being contested in good faith and for which adequate reserves have been established, (iv) liens created by Acquirer or its successors and assigns and (v) non-exclusive object code licenses of Company Products or rights of use of the Company Products for SaaS products granted to customers of the Company in the ordinary course of business consistent with past practice.

“Person” means any natural person, company, corporation, limited liability company, general partnership, limited partnership, trust, proprietorship, joint venture, business organization or Governmental Entity.

“Post-Closing Tax Period” means any taxable year or other period that begins after the Closing Date, and with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date.

“Pre-Closing Tax Period” means any taxable period (or portion thereof) ending on or prior to the Closing Date, including the portion of any Straddle Period through the end of the Closing Date.

“Pre-Closing Taxes” means (i) any Taxes of the Company that are attributable to or imposed with respect to any Pre-Closing Tax Period, (ii) any Transfer Taxes, (iii) any Taxes of any Person imposed on the Company as a transferee or successor, by Contract or by operation of law, or otherwise, which Taxes relate to an event or transaction occurring before the Closing, and (iv) any Taxes imposed on any member of a consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member prior to the Closing Date by reason of Treasury Regulation Section 1.1502-6(a) or any analogous or corresponding provision under state, local or non-U.S. law. For the avoidance of doubt, Transaction Payroll Taxes shall not be included in the calculation of Pre-Closing Taxes.

“Pro Rata Share” means, with respect to a particular Effective Time Holder, a percentage determined by dividing the number of shares of Company Capital Stock held by such Effective Time Holder as of the Effective Time (on an as-converted to Company Common Stock basis) by the Outstanding Company Capital Stock.

“Property” means all real property leased or owned by the Company either currently or in the past.

“Restricted Parties” means any Persons included on any restricted party lists maintained by the United States, or any other country with jurisdiction over the products or operations of the Company, including the U.S. Treasury Department’s Office of Foreign Assets Control’s Specially Designated Nationals and Foreign Sanctions Evaders Lists, the U.S. Commerce Department’s Entity List, Denied Persons List and Unverified List, and the U.S. Department of State’s Debarred List.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Subsidiary**” means any corporation, association, business entity, partnership, limited liability company or other Person of which the Company, either alone or together with one or more Subsidiaries or by one or more other Subsidiaries (i) directly or indirectly owns or controls securities or other interests representing more than fifty percent (50%) of the voting power of such Person or (ii) is entitled, by Contract or otherwise, to elect, appoint or designate directors constituting a majority of the members of such Person’s board of directors or similar governing body.

“**Target Working Capital**” means \$2,300,000.

“**Target Working Capital Minimum**” means Target Working Capital *minus* \$50,000.

“**Tax**” (and, with correlative meaning, “**Taxes**” and “**Taxable**”) means (i) any net income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, fringe benefit, capital stock, profits, license, registration, withholding, payroll, social security (or equivalent), employment, unemployment, disability, excise, escheat, severance, stamp, occupation, premium, property (real, tangible or intangible), environmental or windfall profit tax, custom duty or other tax, governmental fee that is in the nature of a tax or other like assessment or similar charge, together with any interest or any penalty, addition to tax or additional amount (whether disputed or not) imposed by any Governmental Entity responsible for the imposition of any such tax (domestic or foreign) (each, a “**Tax Authority**”), (ii) any Liability for the payment of any amounts of the type described in clause (i) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any Taxable period and (iii) any Liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person.

“**Tax Proceeding**” means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding and any informal proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard by or before, or that otherwise has involved or may involve, any Governmental Entity or any arbitrator or arbitration panel with respect to Taxes of the Company or any Subsidiary.

“**Tax Return**” means any return, statement, report or form (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment and information returns and reports) required to be filed with respect to Taxes, including, for avoidance of doubt, any return to extend the deadline for the filing of any such return.

“**Total Adjusted Merger Consideration**” means Total Merger Consideration *minus* the aggregate Vested Company Option Cash Out Amount payable all holders of Vested Company Options pursuant to Section 1.9(a)(iv).

“**Total Merger Consideration**” means (i) \$68,000,000, *minus* (ii) Estimated Company Transaction Expenses, *minus* (iii) Estimated Company Indebtedness, *minus* (iv) the Downward Closing Working Capital Adjustment, *plus* (v) the Estimated Excess Cash Amount.

“**Transaction Payroll Taxes**” means any employer portion of payroll or employment Taxes incurred by the Company (or a Subsidiary of the Company) on or prior to the Effective Time, in connection with the Vested Company Option Cash Out Amount, Company Transaction Expenses and any other compensatory payments made in connection with the transactions contemplated by this Agreement.

“**Unvested Company Option**” means any Company Option (or portion thereof) that is unvested immediately prior to the Effective Time, and does not vest as a result of the occurrence of the Merger at the Effective Time.

“**Vested Company Option**” means any Company Option (or portion thereof) that is vested and outstanding immediately prior to the Effective Time, after taking into account any Company Option (or portion thereof) that, as a result of the Merger, will accelerate and no longer be subject to any further vesting, right of repurchase, risk of forfeiture or other such conditions.

“**Working Capital**” means the amount equal to the current assets of the Company and its Subsidiary *minus* the current liabilities of the Company and its Subsidiary; *provided* that, for the avoidance of doubt, (i) current assets shall not include any deferred Tax assets, any Cash or any Outstanding Account Receivables and (ii) current liabilities shall include Pre-Closing Taxes and the items set forth in subsections (iii) of the definition of Employee Costs, but shall not include (a) Company Indebtedness, (b) any deferred Tax liabilities, (c) any Company Transaction Expenses or (d) items set forth in subsections (i) or (ii) of the definition of Employee Costs. For the avoidance of doubt, Working Capital shall be calculated in accordance (x) with the Company Accounting Principles, (y) as of the Calculation Time, (z) on a consolidated basis and (aa) the methodology set forth on the Exhibit C.

(b) Other capitalized terms used herein and not defined in this Section 1.1(a) have the meanings ascribed to such terms in the following:

Defined Term	Section Reference	Defined Term	Section Reference
280G Stockholder Approval	See 5.14	Company Stockholder Consent	See Recital E
Accounting Arbitrator	See 1.17(c)(ii)	Company Voting Debt	See 2.2(e)
Acquirer	See Preamble	Company-Owned IP Rights	See 2.10(a)(ii)
Actual Cash	See 1.17(b)	Confidential Information	See 2.10(t)
Actual Company Indebtedness	See 1.17(b)	Confidentiality Agreement	See 5.3(a)
Actual Company Transaction Expenses	See 1.17(b)	Contaminants	See 2.10(x)
Actual Excess Cash Amount	See 1.17(b)	Continuing Employees	See 5.19(a)
Actual Working Capital	See 1.17(b)	D&O Indemnified Parties	See 5.18(b)
Advisory Group	See 8.7(b), See	D&O Insurance	See 5.18(a)
Agreement	See Preamble	Dispute Notice	See 1.17(c)(ii)
Agreement Date	See Preamble	Effective Time	See 1.5
Certificate of Merger	See 1.2	Employee	See 2.13(a)
Certificates	See 1.10(g)(i)	ERISA	See 2.13(a)
Claims Period	See 8.4	ERISA Affiliate	See 2.13(a)
Closing	See 1.3	Escrow Agreement	See 1.4(a)(ii)
Closing Date	See 1.3	Escrow Fund	See 1.10(b)(i)
Closing Spreadsheet	See 5.9	Escrow Period	See 8.4
Company	See Preamble	Escrow Release Date	See 1.10(b)(iii)
Company Authorizations	See 2.8(b)	Estimated Cash	See 1.17(a)
Company Balance Sheet Date	See 2.4(b)	Estimated Company Indebtedness	See 1.17(a)
Company Board	See Recital A	Estimated Company Transaction Expenses	See 1.17(a)
Company Disclosure Schedule	See Article II	Estimated Excess Cash Amount	
Company Employee Plan	See 2.13(a)	Estimated Working Capital	See 1.17(a)
Company IP Rights	See 2.10(a)(i)	Expense Fund	See 1.17(a)
Company IP Rights Agreements	See 2.10(i)	Expense Fund Amount	See 8.7(c)
Company Products	See 2.10(a)(iii)	Fenwick	See 1.10(c)
Company Registered Intellectual Property	See 2.10(a)(iv)	Final Cash	See 9.12
Company Representatives		Final Company Indebtedness	See 1.17(b)
Company Source Code	See 5.5(a)	Final Company Transaction Expenses	See 1.17(b)
Company Stockholder Approval	See 2.10(a)(v) See 2.3(a)	Final Excess Cash Amount	See 1.17(b)
			See 1.17(b)

Final Total Adjusted Merger Consideration	See 1.17(d)	Payoff Letter	See 1.4(b)(xiv)
Final Working Capital	See 1.17(b)	PCI DSS	See 2.10(a)(x)
Financial Statements	See 2.4(a)	PEO	See 2.13(a)
FIRPTA Notification	See 1.4(a)(b)(xii)	PEO Company Employee Plan	See 2.13(a)
FIRPTA Statement	See 1.4(a)(b)(xii)	Post-Closing Statement	See 1.17(b)
Founder Holdback Agreements	See Recital D	Pre-Closing Period	See 4.1
Fundamental Claims	See 8.3(b)	Pre-Closing Statement	See 1.17(a)
Fundamental Claims Period	See 8.4	Protected Information	See 2.10(a)(xi)
Fundamental Rep Claim	See 8.3(a)	Real Property Lease	See 2.9(b)
HIPAA	See 2.10(a)(vi)	Restrictive Covenant Agreements	See Recital C
HMRC Agreed Value	See 2.2(d)	Section 280G Payments	See 5.14
Indemnifiable Damages	See 8.2	Security Assessment	See 2.10(ii)
Indemnifiable Settlement	See 8.8	Security Breach	See 2.10(a)(xii)
Indemnified Person	See 8.2	Significant Customer	See 2.20(a)
Information Privacy and Security Laws	See 2.10(a)(vii)	Significant Supplier	See 2.20(b)
Intellectual Property	See 2.10(a)(viii)	Statement No. 5	See 2.4(c)
Interested Parties	See 2.14	Stockholder Notice	See 5.1(b)
Invoice	See 1.4(b)(xiv)	Stockholders' Agent	See 8.7(a), See Preamble
IT Assets	See 2.10(a)(ix)		See 8.7(b)
Joinder Agreement	See Recital E	Stockholders' Agent Engagement Agreement	
Joint Instruction	See 1.10(b)(iii)	Stockholders' Agent Expenses	See 8.7(b)
Letter of Transmittal	See 1.10(g)(i)	Stockholders' Agent Group	See 8.7(b)
Material Contract	See 2.18(a)	Straddle Period	See 5.17(c)
Merger	See Recital A	Sub	See Preamble
New Litigation Claim	See 5.7	Surviving Corporation	See 1.2
Offer Packages	See Recital C	Tax Claim	See 5.17(e)
Officer's Certificate	See 8.5(a)	Termination Date	See 7.1(b)
Open Source Materials	See 2.10(u)	Third-Party Intellectual Property Rights	See 2.10(a)(xiii)
Option Cancellation Agreement	See 1.4(a)(b)(xiii)	Threshold	See 8.3(a)
Parachute Payment Waiver	See 1.4(b)(vi)	Transaction Dispute	See 9.12
Paying Agent Agreement	See 1.10(f)	UK Company Options	See 2.2(d)
		Vested Company Option Cash Out Amount	See 1.9(a)(iv)
		WARN Act	
			See 2.13(r)

1.2 The Merger. At the Effective Time, on the terms and subject to the conditions set forth in this Agreement, the Certificate of Merger, in a form reasonably acceptable to the Company and Acquirer (the “*Certificate of Merger*”) and the applicable provisions of Delaware Law, Sub shall merge with and into the Company, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation and shall become a wholly owned subsidiary of Acquirer. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the “*Surviving Corporation*.”

1.3 Closing. Unless this Agreement is earlier terminated in accordance with Section 7.1, the closing of the transactions contemplated by this Agreement (the “*Closing*”) shall take place within three (3) Business Days, or such other time and date as may be agreed by the parties hereto, after the satisfaction or waiver of each of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), but no earlier than November 1, 2018. The Closing shall take place at the offices of Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304 or at such other location as the parties hereto agree. The date on which the Closing occurs is herein referred to as the “*Closing Date*.”

1.4 Closing Deliveries.

(a) Acquirer Deliveries. Acquirer shall deliver to the Company, at or prior to the Closing, each of the following:

(i) a certificate, dated as of the Closing Date, executed on behalf of Acquirer by a duly authorized officer of Acquirer to the effect that each of the conditions set forth in Section 6.2 has been satisfied; and

(ii) an Escrow Agreement, in a form reasonably acceptable to the Company and Acquirer (the “*Escrow Agreement*”), dated as of the Closing Date and executed by Acquirer and the Escrow Agent.

(b) Company Deliveries. The Company shall deliver to Acquirer, at or prior to the Closing, each of the following:

(i) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Chief Executive Officer, to the effect that each of the conditions set forth in Section 6.3 has been satisfied;

(ii) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Secretary, certifying the Company’s (A) certificate of incorporation, (B) bylaws, (C) board resolutions approving the Merger and this Agreement and declaring the advisability thereof and (D) stockholder resolutions approving the adoption of this Agreement;

(iii) the Escrow Agreement, dated as of the Closing Date and executed by the Stockholders’ Agent;

(iv) an unrevoked Joinder Agreement, executed by the Company Stockholders in the aggregate holding at least ninety-five percent (95%) of the Company Capital Stock (voting as a single class, on an as-converted to Common Stock basis) as of immediately prior to the Closing, including each Company Stockholder listed on Schedule A;

(v) if requested by Acquirer, evidence satisfactory to Acquirer of (A) the resignation of each of the directors and each of the officers of the Company and its Subsidiary in office immediately prior to the Closing as directors and/or officers, as applicable, of the Company and its Subsidiary, effective no later than immediately prior to the Effective Time, and (B) the appointment of new officers and directors of the Company, which appointments are to become effective at the Effective Time;

(vi) a Parachute Payment Waiver, in a form reasonably acceptable to the Company and Acquirer (a “*Parachute Payment Waiver*”), executed by each Person required to execute such a waiver pursuant to Section 5.13;

(vii) a certificate from the Secretary of State of the States of Delaware and California dated within three (3) days prior to the Closing Date certifying that the Company is in good standing and, to the extent such information is provided by such jurisdiction, that all applicable Taxes and fees of the Company through and including the Closing Date have been paid;

(viii) [intentionally omitted];

(ix) evidence reasonably satisfactory to Acquirer that each of the Contracts set forth on Schedule D has been terminated (or will be terminated as of the Effective Time) and is of no further force or effect (or will be of no further force or effect as of the Effective Time);

(x) evidence of the termination of any Company Employee Plan set forth on Schedule E;

(xi) the Closing Spreadsheet completed to include all of the information specified in Section 5.9 in a form reasonably acceptable to Acquirer and a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, certifying that such Closing Spreadsheet is true, correct and complete;

(xii) a statement from the Company, dated as of the Closing Date and conforming to the requirements of Regulations Sections 1.897-2(h)(1)(i) and 1.1445-2(c)(3), certifying that the Company is not, and has never been, a “United States real property holding corporation” for purposes of Sections 897 and 1445 of the Code (the “**FIRPTA Statement**”) and a notice to the Internal Revenue Service in accordance with the requirements under Treasury Regulations Section 1.897-2(h)(2), dated as of the Closing Date (the “**FIRPTA Notification**”) together with written authorization for Acquirer to deliver the FIRPTA Notification and a copy of the FIRPTA Statement to the Internal Revenue Service on behalf of the Company after the Closing, in each case in form and substance reasonably satisfactory to Acquirer and duly executed by the Company and signed by a responsible corporate officer of the Company;

(xiii) an option cancellation agreement, in a form reasonably acceptable to the Company and Acquirer (the “**Option Cancellation Agreement**”), from holders representing at least 90% of the Vested Company Options issued and outstanding as of immediately prior to the Effective Time;

(xiv) (A) an executed payoff letter, dated no more than three (3) Business Days prior to the Closing Date, with respect to all borrowed money indebtedness outstanding as of immediately prior to the Closing to (x) satisfy such Estimated Company Indebtedness as of the Closing Date and (y) terminate and release any Encumbrances related thereto (each, a “**Payoff Letter**”); and (B) an invoice from each advisor or other service provider to the Company (other than any employee, director or officer of the Company), dated no more than three (3) Business Days prior to the Closing Date, with respect to all Estimated Company Transaction Expenses estimated to be due and payable to such advisor or other service provider, as the case may be, as of the Closing Date (each, an “**Invoice**”), along with, in each case, a properly completed Form W-9, or the appropriate version of IRS Form W-8, if applicable, from each Person receiving any payment in satisfaction of Estimated Company Indebtedness or Estimated Company Transaction Expenses in connection with the Closing;

(xv) a duly executed stock transfer agreement, in a form reasonably acceptable to Acquirer, with respect of the Company Capital Stock transferred by a Founder to the individuals and in the amount reflected on Schedule H; and

(xvi) a duly executed bonus acknowledgement agreement, in a form reasonably acceptable to Acquirer, from individuals who shall receive ninety percent (90%) of the aggregate value of the 2018 Annual Bonus and Transaction Bonuses as set forth on Schedule H.

1.5 Effective Time. At the Closing, after the satisfaction or waiver of each of the conditions set forth in Article VI, Sub and the Company shall cause the Certificate of Merger to be filed with the Secretary of State of the State of Delaware, in accordance with the relevant provisions of Delaware Law (the time of acceptance by the Secretary of State of the State of Delaware of such filing or such later time as may be agreed to by Acquirer and the Company in writing (and set forth in the Certificate of Merger) being referred to herein as the “**Effective Time**”).

1.6 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of Delaware Law. Without limiting the generality

of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Sub shall become debts, liabilities and duties of the Surviving Corporation.

1.7 Certificate of Incorporation and Bylaws.

(a) At the Effective Time, the certificate of incorporation of the Surviving Corporation shall be amended in its entirety to read as set forth in the Certificate of Merger, until thereafter amended as provided by Delaware Law.

(b) At the Effective Time, the bylaws of the Surviving Corporation shall be amended in their entirety to read as the bylaws of Sub, until thereafter amended as provided by Delaware Law, the certificate of incorporation of the Surviving Corporation and such bylaws.

1.8 Directors and Officers.

(a) At the Effective Time, the members of the board of directors of Sub immediately prior to the Effective Time shall be appointed as the members of the board of directors of the Surviving Corporation immediately after the Effective Time until their respective successors are duly elected or appointed and qualified.

(b) At the Effective Time, the officers of Sub immediately prior to the Effective Time shall be appointed as the officers of the Surviving Corporation immediately after the Effective Time until their respective successors are duly appointed.

1.9 Effect on the Company Capital Stock and Company Options.

(a) **Company Capital Stock, Company Options.** On the terms and subject to the conditions set forth in this Agreement, and without any action on the part of any Company Securityholder:

(i) **Company Series A Stock.** At the Effective Time, each share of Company Series A Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares owned by the Company) shall be automatically converted into, subject to and in accordance with Section 1.10, (1) the right to receive an amount of cash (without interest) equal to the Closing Per Share Amount and (1) the contingent right to receive the Escrow Per Share Amount and Expense Fund Per Share Amount (in each case, as provided in this Agreement and the Escrow Agreement, at the respective times and subject to the contingencies specified herein and therein). The amount of cash each Company Stockholder is entitled to receive for the shares of Company Series A Stock held by such Company Stockholder shall be rounded to the nearest cent and computed after aggregating cash amounts for all shares of Company Series A Stock held by such Company Stockholder.

(ii) **Company Series B Stock.** At the Effective Time, each share of Company Series B Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares owned by the Company) shall be automatically converted into, subject to and in accordance with Section 1.10, (1) the right to receive an amount of cash (without interest) equal to the Closing Per Share Amount and (1) the contingent right to receive the Escrow Per Share Amount and Expense Fund Per Share Amount (in each case, as provided in this Agreement and the Escrow Agreement, at the respective times and subject to the contingencies specified herein and therein). The amount of cash each Company Stockholder is entitled to receive for the shares of Company Series B Stock held by such Company Stockholder shall be rounded to the nearest cent and computed after aggregating cash amounts for all shares of Company Series B Stock held by such Company Stockholder.

(iii) **Company Common Stock.** At the Effective Time, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares owned by the Company) shall be automatically converted into, subject to and in accordance with Section 1.10, (1) the right to receive an amount of cash (without interest) equal to the Closing Per Share Amount and (1) the contingent right

to receive the Escrow Per Share Amount, Expense Fund Per Share Amount and, solely with respect to a share of Company Common Stock held by a Founder, the Founder Holdback Per Share Amount (in each case, as provided in this Agreement, the Escrow Agreement and with respect to the Founders, the Founder Holdback Agreements, at the respective times and subject to the contingencies specified herein and therein). The amount of cash each Company Stockholder is entitled to receive for the shares of Company Common Stock held by such Company Stockholder shall be rounded to the nearest cent and computed after aggregating cash amounts for all shares of Company Common Stock held by such Company Stockholder.

(iv) Vested Company Options. Each Vested Company Option outstanding as of immediately prior to the Effective Time (including Unvested Company Options (or portion thereof) that accelerate by their terms and become Vested Company Options at the Effective Time) shall be cancelled and converted automatically at the Effective Time into the right to receive with respect to each share subject thereto, an amount in cash, without interest, equal to the excess, if any, of the Per Share Amount for each share of Company Common Stock issuable upon the exercise in full of such Vested Company Option over the per share exercise price of such Vested Company Option (such excess amount being hereinafter referred to as the “*Vested Company Option Cash Out Amount*”), each in accordance with, and subject to, the terms and conditions set forth in this Agreement. Vested Company Options with a per share exercise price greater than or equal to the Per Share Amount shall be cancelled without consideration. The payment of the Vested Company Option Cash Out Amount to any holder of Vested Company Options shall, subject to delivery by such holder of an executed Option Cancellation Agreement to Acquirer, be paid to the Surviving Corporation for further payment, as soon as practicable (but in no event later than the second regular payroll date after the Effective Time), to such holders of Vested Company Options through the Surviving Corporation’s payroll processing system net of applicable Tax withholding. For purposes of calculating the aggregate amount of consideration payable to each holder of a Vested Company Option pursuant to this Section 1.9(a)(iv), (A) all shares of Company Common Stock issuable upon the exercise in full of the Vested Company Options held by each holder of Vested Company Options shall be aggregated and (B) the amount of cash to be paid to each such holder of Vested Company Options shall be rounded down to the nearest whole cent.

(v) Unvested Company Options. No Unvested Company Options shall be assumed by Acquirer, substituted with any equivalent option or right to purchase capital stock of the Acquirer, the Surviving Corporation or any of its Affiliates or otherwise continued by Acquirer or any of its Affiliates (including the Surviving Corporation) in connection with the Merger or the other transactions contemplated by this Agreement. At the Effective Time, by virtue of the Merger and without the need for any further action on the part of the holder thereof, all Unvested Company Options outstanding immediately prior to the Effective Time (except for Unvested Company Options (or any portion thereof) that accelerate by their terms and become Vested Company Options at the Effective Time) shall be cancelled and extinguished without any present or future right to receive any portion of the Total Merger Consideration or any other consideration.

(vi) Total Merger Consideration. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the aggregate consideration paid by Acquirer to the Company Securityholders exceed the Final Total Adjusted Merger Consideration.

(vii) Capital Stock of Sub. Each share of capital stock of Sub that is issued and outstanding immediately prior to the Effective Time will, by virtue of the Merger and without further action on the part of the sole stockholder of Sub, be converted into and become one share of common stock of the Surviving Corporation (and the shares of Surviving Corporation into which the shares of Sub capital stock are so converted shall be the only shares of the Surviving Corporation’s capital stock that are issued and outstanding immediately after the Effective Time). Each certificate evidencing ownership of shares of Sub common stock will evidence ownership of such shares of common stock of the Surviving Corporation.

(b) Treatment of Shares of Company Capital Stock Owned by the Company. At the Effective Time, all shares of Company Capital Stock that are owned by the Company as treasury stock immediately prior to the Effective Time shall be cancelled and extinguished without any conversion thereof.

(c) Adjustments. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to the Company Capital Stock occurring after the Agreement Date and prior to the Effective Time, all references in this Agreement to specified numbers of shares of any class or series affected thereby, and all calculations provided for that are based upon numbers of shares of any class or series (or trading prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties hereto the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

(d) Appraisal Rights. Notwithstanding anything contained herein to the contrary, any Dissenting Shares shall not be converted into the right to receive the cash amount provided for in Section 1.9(a), but shall instead be converted into such rights as are granted to such holders by Delaware Law or California Law, as the case may be. Each holder of Dissenting Shares who, pursuant to the provisions of Delaware Law or California Law, as the case may be, becomes entitled to payment thereunder for such shares shall receive payment therefor in accordance with Delaware Law or California Law, as applicable (but only after the value therefor shall have been agreed upon or finally determined pursuant to such provisions). If, after the Effective Time, any Dissenting Shares shall lose their status as Dissenting Shares, then any such shares shall immediately be converted into the right to receive the cash payable pursuant to Section 1.9(a) in respect of such shares as if such shares never had been Dissenting Shares, and Acquirer shall issue and deliver to the holder thereof, at (or as promptly as reasonably practicable after) the applicable time or times specified in Section 1.10(c), following the satisfaction of the applicable conditions set forth in Section 1.10(c), the amount of cash to which such holder would be entitled in respect thereof under this Section 1.9 as if such shares never had been Dissenting Shares. The Company shall give Acquirer (i) prompt notice of any demands for appraisal or purchase received by the Company, withdrawals of such demands, and any other instruments served pursuant to Delaware Law or California Law and received by the Company and (ii) the right to direct all negotiations and proceedings with respect to demands for appraisal or purchase under Delaware Law or California Law. The Company shall not, except with the prior written consent of Acquirer, or as otherwise required under Delaware Law or California Law, voluntarily make any payment or offer to make any payment with respect to, or settle or offer to settle, any claim or demand in respect of any Dissenting Shares. The payout of consideration under this Agreement to the Company Stockholders (other than to holders of Dissenting Shares who shall be treated as provided in this Section 1.9(d) and under Delaware Law or California Law, as applicable) shall not be affected by the exercise or potential exercise of appraisal rights or dissenters' rights under Delaware Law or California Law by any other Company Stockholder.

(e) Rights Not Transferable. The rights of the Company Securityholders as of immediately prior to the Effective Time are personal to each such Company Securityholder and shall not be transferable for any reason otherwise than by operation of law, will or the laws of descent and distribution. Any attempted transfer of such right by any holder thereof (otherwise than as permitted by the immediately preceding sentence) shall be null and void.

1.10 Payment of Total Merger Consideration; Escrow Fund; Exchange Procedures; Other.

(a) Total Merger Consideration.

(i) At or immediately following the Closing, and in any event within one Business Day, Acquirer or a direct or indirect subsidiary of Acquirer shall transfer, by wire transfer of immediately available funds, to the Paying Agent for exchange in accordance with this Section 1.10, through such reasonable procedures as Acquirer may adopt, the aggregate amount of cash payable pursuant to Section 1.9(a)(i)(A), Section 1.9(a)(ii)(A) and Section 1.9(a)(iii)(A).

(ii) At or immediately following the Closing, and in any event within one Business Day, Acquirer or a direct or indirect subsidiary of Acquirer shall deliver to the Surviving Corporation, for further distribution to the Company Optionholders in accordance with Section 1.9(a)(iv), the aggregate Vested Company Option Cash Out Amount payable to all holders of Vested Company Options pursuant to Section 1.9(a)(iv).

(b) Escrow Fund.

(i) At or immediately the Closing, and in any event within one Business Day, Acquirer or a direct or indirect subsidiary of Acquirer shall transfer, by wire transfer of immediately available funds, the Escrow Cash to the Escrow Agent to hold in trust as an escrow fund (the “**Escrow Fund**”) under the terms of this Agreement and the Escrow Agreement.

(ii) The Escrow Fund shall be available to compensate Acquirer (on behalf of itself or any other Indemnified Person) for Indemnifiable Damages pursuant to the indemnification obligations of the Effective Time Holders set forth in Article VIII and for any amounts owing to Acquirer as finally determined pursuant to Section 1.17(d).

(iii) Within five (5) Business Days following the expiration of the Escrow Period (the “**Escrow Release Date**”), each of Acquirer and the Stockholders’ Agent shall deliver a joint written instrument in accordance with the terms of the Escrow Agreement (a “**Joint Instruction**”) directing the Escrow Agent to distribute to the Paying Agent, for further distribution to the Effective Time Holders (based on each Effective Time Holder’s Pro Rata Share of such distribution) the Escrow Cash then remaining in the Escrow Fund less that portion of the Escrow Fund equal to the sum of (1) the amount of Indemnifiable Damages payable pursuant to Article VIII in connection with claims for indemnification that have been settled as of the Escrow Release Date but remain unsatisfied and (2) the amount of Indemnifiable Damages stated in any Officer Certificate delivered to the Stockholders’ Agent pursuant to Article VIII on or prior to the expiration of the Escrow Period that remains unsettled or disputed. Any portion of the Escrow Cash then remaining in the Escrow Fund held by the Escrow Agent following the Escrow Release Date with respect to pending but unresolved claims for indemnification that is not distributed to Acquirer or other Indemnified Persons from the Escrow Fund upon the final resolution of such claims in accordance with the terms of this Agreement, shall be distributed by the Escrow Agent to the Paying Agent (for further distribution to the Effective Time Holders in accordance with each such Effective Time Holder’s Pro Rata Share) upon delivery of a Joint Instruction by Acquirer and the Stockholders’ Agent directing the Escrow Agent to make such distribution (and each of Acquirer and the Stockholders’ Agent agree to provide the Escrow Agent with such Joint Instruction, as applicable, following the final resolution of any such claim).

(iv) The parties hereto acknowledge and agree that the Escrow Fund is intended to be part of the aggregate acquisition consideration payable in exchange for Company Capital Stock in accordance with this Agreement. Acquirer and the Company agree that: (i) except with respect to interest imputed described in clause (ii) the parties agree to report payments of the Escrow Fund for U.S. federal, state and foreign income Tax purposes consistent with such treatment unless otherwise required by a change in applicable law following the date hereof or a “determination” within the meaning of Section 1313 of the Code, (ii) if and to the extent any part of the Escrow Fund is actually distributed to the Effective Time Holders, interest may be imputed on such amount payable as

required by Sections 483 or 1274 of the Code, and (iii) the Effective Time Holders shall be required to report as interest income, and Acquirer shall be entitled to deduct as interest expense, to the extent permitted by applicable law, the imputed interest amount described in preceding clause (ii).

(c) Expense Fund. At or immediately following the Closing, and in any event within one Business Day, Acquirer shall transfer, by wire transfer of immediately available funds, \$150,000 (the “**Expense Fund Amount**”) to the Stockholders’ Agent for use as set forth in Section 8.7.

(d) Founder Holdback. Notwithstanding any provision herein to the contrary, with respect to each Founder, an amount equal to the Founder Holdback Per Share Amount with respect to each share of Company Common Stock held by such Founder otherwise payable to such Founder pursuant Section 1.9(a)(iii), as set forth in the applicable Founder’s Founder Holdback Agreement, shall not be paid to such Founder at Closing, and all such unpaid amounts shall become payable subject to vesting and the other terms and conditions set forth in this Agreement and the applicable Founder’s Founder Holdback Agreement. Acquirer acknowledges and agrees that the Founder Holdback Per Share Amount payable to the Founder shall be treated for Tax purposes in accordance with Section 6 of each Founder Holdback Agreement.

(e) Company Transaction Expenses and Company Indebtedness. At the Closing, Acquirer shall, by wire transfer of immediately available funds, on behalf of the Company and its Subsidiary, pay (i) to each lender and applicable account designated on the Closing Spreadsheet in the applicable Payoff Letter, the amount of Company Indebtedness due at Closing to such lender and (ii) all Company Transaction Expenses payable to an advisor or other service provider to the Company and its Subsidiary (other than any employee, director or officer) that remain outstanding as of the Closing to such account or accounts as are designated in the applicable Invoices and by the Company in the Closing Spreadsheet.

(f) Paying Agent. Acquiom Financial LLC shall act as payments administrator (in its capacity as the payments administrator, the “**Paying Agent**”) in the Merger. Acquirer and the Stockholders’ Agent shall enter into a payments administration agreement with the Paying Agent (the “**Paying Agent Agreement**”) at or prior to the Closing.

(g) Exchange Procedures.

(i) No later than two (2) Business Days prior to Closing, Acquirer shall make available to the Company a letter of transmittal, in a form reasonably acceptable to the Company and Acquirer (the “**Letter of Transmittal**”). Promptly following the Closing Date in accordance with the Paying Agent Agreement, the Paying Agent shall mail, email or otherwise provide to every holder of record of shares of Company Capital Stock that were issued and outstanding immediately prior to the Effective Time and that has not previously delivered a properly completed and duly executed Letter of Transmittal together with its Certificates and any additional documents reasonably required by the Paying Agent: (1) a form of Letter of Transmittal, (1) instructions for use of the Letter of Transmittal in effecting the surrender of certificates or instruments that immediately prior to the Effective Time represented issued and outstanding shares of Company Capital Stock that were converted into the right to receive consideration pursuant to Section 1.9(a) (the “**Certificates**”) and (C) any other documents reasonably required by the Paying Agent in exchange for such cash. Such Letter of Transmittal and instructions thereto may be accessible through a link contained in an email from the Paying Agent. The Letter of Transmittal shall specify that delivery of Certificates shall be effected, and risk of loss and title to Certificates shall pass, only upon receipt thereof by the Paying Agent, together with a properly completed and duly executed Letter of Transmittal, duly executed on behalf of each Person effecting the surrender of such Certificates, and shall be in such form and have such other provisions as Acquirer or the Paying Agent may reasonably specify.

(ii) As soon as reasonably practicable after the date of delivery to the Paying Agent (or to such other agent or agents as may be appointed by Acquirer) of a Certificate, together with a properly completed and duly executed Letter of Transmittal and any other documentation required thereby, (1) the holder of record of such Certificate shall be entitled to receive via ACH (or, if indicated in such duly executed Letter of Transmittal, via a check or a wire for an additional fee) representing the cash amount that such holder has the right to receive pursuant to Section 1.9(a)(i)(A), Section 1.9(a)(ii)(A) and Section 1.9(a)(iii)(A) (as applicable) in respect of such Certificate and (1) such Certificate shall be cancelled.

(h) No Interest. No interest shall accumulate on any cash payable in connection with the Merger (other than interest accrued (if any) on the Escrow Cash according to the Escrow Agreement).

(i) Transfers of Ownership. If any cash amount payable pursuant to Section 1.9(a) is to be paid to a Person other than the Person to which the Certificate surrendered in exchange therefor is registered, it shall be a condition of the payment thereof that the Certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and that the Person requesting such exchange shall have paid to Acquirer or any agent designated by it any transfer or other Taxes required by reason of the payment of cash in any name other than that of the registered holder of the Certificate surrendered, or established to the satisfaction of Acquirer or any agent designated by it that such Tax has been paid or is not payable.

(j) No Liability. Notwithstanding anything to the contrary in this Section 1.10, none of the Paying Agent, the Surviving Corporation or any party hereto shall be liable to any Person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(k) Unclaimed Cash. Any portion of funds held by the Paying Agent that have not been delivered to any holders of Certificates pursuant to this Article I within twelve (12) months after the Effective Time shall promptly be paid to Acquirer, and thereafter each holder of a Certificate who has not theretofore complied with the exchange procedures set forth in and contemplated by Section 1.10(c) shall look only to the Acquirer (subject to abandoned property, escheat and similar laws) for its claim, only as a general unsecured creditor thereof, to the cash payable pursuant to Section 1.9(a). Notwithstanding anything to the contrary contained herein, if any Certificate has not been surrendered prior to the date on which the merger consideration contemplated by Section 1.9 in respect of such Certificate would otherwise escheat to or become the property of any Governmental Entity, any amounts payable in respect of such Certificate shall, to the extent permitted by applicable law, become the property of Acquirer, free and clear of all claims or interests of any Person previously entitled thereto.

1.11 No Further Ownership Rights in the Company Capital Stock. All cash paid or payable following the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof shall be so paid or payable in full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock that were issued and outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate is presented to the Surviving Corporation for any reason, such Certificate shall be cancelled and exchanged as provided in this Article I.

1.12 Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, the Paying Agent shall issue in exchange for such Certificate, following the making of an affidavit of that fact by the record holder thereof, such cash as may be required pursuant to Section 1.9 in respect of such Certificate; *provided* that Acquirer or the Paying Agent may, in its discretion and as a condition precedent to the issuance thereof, require the record holder of such Certificate to deliver a bond in such sum or execute an indemnification agreement as Acquirer or the Paying Agent may reasonably direct as indemnity against any claim that may be made against Acquirer, the Surviving Corporation, the Paying Agent and/or any of their respective representatives or agents with respect to such Certificate.

1.13 Tax Consequences. The parties hereto intend the Merger to be a taxable sale of shares of Company Capital Stock by the Effective Time Holders. Acquirer makes no representations or warranties to the Company or to any Company Securityholder regarding the Tax treatment of the Merger, or any of the Tax consequences to the Company or any Company Securityholder of this Agreement, the Merger or any of the other transactions or agreements contemplated by this Agreement. The Company acknowledges that the Company and the Company Securityholders are relying solely on their own Tax advisors in connection with this Agreement, the Merger and the other transactions and agreements contemplated by this Agreement.

1.14 Withholding Rights. Each of Acquirer, the Surviving Corporation, the Paying Agent and the Escrow Agent shall be entitled to deduct and withhold from the Total Merger Consideration deliverable under this Agreement, and from any other payments otherwise required pursuant to this Agreement or the Escrow Agreement, to any Company Securityholder or holder of any Certificates such amounts in cash or shares as Acquirer, the Surviving Corporation, the Escrow Agent or the Paying Agent is required to deduct and withhold with respect to any such deliveries and payments under the Code or any provision of state, local, provincial or foreign Tax law. To the extent that amounts are so withheld and properly remitted to the appropriate Governmental Entity in accordance with applicable law, such withheld and paid over amounts shall be treated for all purposes of this Agreement as having been delivered and paid to such holders in respect of which such deduction, withholding and payment was made.

1.15 Exchange Rate. All amounts payable to any party under this Agreement shall be paid in Dollars. Any amounts to be converted into Dollars for the purpose of calculating any amounts under this Agreement, including the amount of the Working Capital, shall be converted into Dollars at the Designated Exchange Rate.

1.16 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and interest in, to and under, and/or possession of, all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of the Company or otherwise, to take all lawful action necessary or desirable to accomplish such purpose or acts, so long as such action is not inconsistent with this Agreement.

1.17 Closing Adjustment; Post-Closing Adjustment; Disputed Final Adjustment; Payment.

(a) Determination of Closing Adjustment. No later than five (5) Business Days prior to the Closing, the Company shall provide Acquirer with its good faith estimate of Working Capital ("**Estimated Working Capital**"), its good faith estimate of the aggregate amount of all Cash ("**Estimated Cash**" and the amount by which such amount exceeds the Minimum Cash Amount, the "**Estimated Excess Cash Amount**"), its good faith estimate of the aggregate amount of Company Indebtedness ("**Estimated Company Indebtedness**"), its good faith estimate of the aggregate amount of unpaid Company Transaction Expenses ("**Estimated Company Transaction Expenses**"), and the resulting calculation of the Total Adjusted Merger Consideration, in each case, calculated consistent with the definitions thereof set forth herein (the statement setting forth such calculations, the "**Pre-Closing Statement**"). During the period after delivery of such Pre-Closing Statement and prior to the Closing Date, (i) the Company will cooperate in good faith with Acquirer in the event that Acquirer disputes any item set forth in such Pre-Closing Statement; *provided* that if the Company and Acquirer are not able to mutually agree on any disputed item prior to the Closing Date, the Pre-Closing Statement provided by the Company, as modified to include any agreed changes, shall be binding for purposes of this Section 1.17 and (ii) Acquirer and its advisors (including, without limitation, its independent accounting firm) shall be provided with such access to the financial books and records and personnel of the Company, its Subsidiary and the Stockholders' Agent as it may reasonably request to enable it to evaluate the calculations of Estimated Working Capital, Estimated Cash and Estimated Excess Cash Amount, Estimated Company Indebtedness and Estimated Company Transaction Expenses.

(b) Determination of Post-Closing Adjustment. Within sixty (60) days following the Closing Date, Acquirer shall deliver to the Stockholders' Agent the calculation of the actual Working Capital ("**Actual Working Capital**"), a calculation of the actual Cash ("**Actual Cash**"), a calculation of the actual Excess Cash Amount (the "**Actual Excess Cash Amount**"), a calculation of the actual Company Transaction Expenses of the Company and its Subsidiary ("**Actual Company Transaction Expenses**"), and a calculation of the actual Company Indebtedness of the Company and its Subsidiary ("**Actual Company Indebtedness**"), in each case, calculated consistent with the definitions thereof set forth herein (the statement setting forth such calculation, the "**Post-Closing Statement**"). If Acquirer fails to deliver the Post-Closing Statement within sixty (60) days after the Closing Date, then for a period of ten (10) days following the expiration of such sixty (60) day period, the Stockholders' Agent shall have the right, at its election, to require Acquirer to deliver the Post-Closing Statement within ten (10) days of the Stockholders' Agent's written demand therefor. If (x) Acquirer does not deliver to the Stockholders' Agent its calculation of Actual Working Capital, Actual Cash and Actual Excess Cash Amount, Actual Company Transaction Expenses or Actual Company Indebtedness and (y) the Stockholders' Agent does not require delivery thereof pursuant to clause (ii) above, then the calculation of Estimated Working Capital determined pursuant to Section 1.17(a) shall be the "**Final Working Capital**," the calculation of Estimated Cash and Estimated Excess Cash Amount determined pursuant to Section 1.17(a) shall be the "**Final Cash**" and the "**Final Excess Cash Amount**," respectively, the calculation of the Estimated Company Indebtedness determined pursuant to Section 1.17(a) shall be the "**Final Company Indebtedness**," and/or the calculation of Estimated Company Transaction Expenses determined pursuant to Section 1.17(a) shall be the "**Final Company Transaction Expenses**", which, in each case, shall be deemed final and conclusive and binding upon the parties hereto in all respects.

(c) Disputed Final Adjustment.

(i) No later than forty-five (45) days following the delivery by Acquirer of the calculation of Actual Working Capital, Actual Cash and Actual Excess Cash Amount, Actual Company Indebtedness and/or Actual Company Transaction Expenses, the Stockholders' Agent shall notify Acquirer in writing whether it accepts or disputes the accuracy of the calculation of Actual Working Capital, Actual Cash and Actual Excess Cash Amount, Actual Company Transaction Expenses and/or Actual Company Indebtedness. During such forty-five (45) day period, the Stockholders' Agent and its advisors (including, without limitation, its independent accounting firm) shall be provided with such access to the financial books and records (subject to the execution of customary work paper access letters) and personnel of the Company, its Subsidiary and Acquirer as it may reasonably request to enable it to evaluate the calculations of Actual Working Capital, Actual Cash and Actual Excess Cash Amount, Actual Company Transaction Expenses and Actual Company Indebtedness prepared by Acquirer. If the Stockholders' Agent accepts the calculation of Actual Working Capital, Actual Cash and Actual Excess Cash Amount, Actual Company Transaction Expenses and/or Actual Company Indebtedness determined pursuant to Section 1.17(b), or if the Stockholders' Agent fails within such forty-five (45) day period to notify Acquirer of any dispute with respect thereto, then the calculation of Actual Working Capital determined pursuant to Section 1.17(b) shall be the "**Final Working Capital**," the calculation of Actual Cash and Actual Excess Cash Amount determined pursuant to Section 1.17(b) shall be the "**Final Cash**" and "**Final Excess Cash Amount**," respectively, the calculation of the Actual Company Indebtedness determined pursuant to Section 1.17(b) shall be the "**Final Company Indebtedness**" and the calculation of Actual Company Transaction Expenses determined pursuant to Section 1.17(b) shall be the "**Final Company Transaction Expenses**" which, in each case, shall be deemed final and conclusive and binding upon the parties hereto in all respects.

(ii) If the Stockholders' Agent disputes the accuracy of the calculation of Actual Working Capital, Actual Cash and Actual Excess Cash Amount, Actual Company Transaction Expenses or Actual Company Indebtedness, the Stockholders' Agent shall provide written notice to Acquirer no later than forty-five (45) days following the delivery by Acquirer to the Stockholders' Agent of the Post-Closing Statement (the "**Dispute Notice**"), setting forth in reasonable detail those items that the Stockholders' Agent disputes, together with the basis therefor, any underlying supporting documentation and the Stockholders' Agent's calculation of such amounts. During the

thirty (30) day period following delivery of a Dispute Notice, Acquirer and the Stockholders' Agent shall negotiate in good faith to resolve their disagreements over the disputed items. During such thirty (30) day period and until the final determination of Final Working Capital, Final Cash and Final Excess Cash Amount, Final Company Indebtedness and/or Final Company Transaction Expenses in accordance with this 1.17(c)(ii), the Stockholders' Agent and its advisors (including, without limitation, its independent accounting firm) shall be provided with such access to the financial books and records and personnel of the Company, its Subsidiary and Acquirer as it may reasonably request to enable it to address all matters set forth in any Dispute Notice (subject to the execution of customary work paper access letters). If the Parties resolve their differences over the disputed items in accordance with the foregoing procedure, "**Final Working Capital**," "**Final Cash**," "**Final Excess Cash Amount**," "**Final Company Indebtedness**" and/or "**Final Company Transaction Expenses**," shall be the amounts agreed upon by them. If the Parties fail to resolve their differences over the disputed items within such thirty (30) day period, then Acquirer and the Stockholders' Agent shall forthwith jointly request that a nationally recognized independent accounting firm selected by Acquirer (other than PriceWaterhouseCoopers and subject to the reasonable approval of the Stockholders' Agent) (the "**Accounting Arbitrator**") make a binding determination as to the disputed items in accordance with this Agreement and the definitions, calculations and principles set forth herein.

(iii) The Accounting Arbitrator will under the terms of its engagement have no more than thirty (30) days from the date of referral and no more than ten (10) Business Days from the final submission of information and testimony by Acquirer and the Stockholders' Agent within which to render its written decision with respect to the disputed items (and only with respect to any unresolved disputed items set forth in the Dispute Notice) and the final calculation of Actual Working Capital, Actual Cash and Actual Excess Cash Amount, Actual Company Transaction Expenses and/or Actual Company Indebtedness shall be based solely on the resolution of such disputed items. The Accounting Arbitrator shall review such submissions and base its determination solely on such submissions. In resolving any disputed item, the Accounting Arbitrator may not assign a value to any item greater than the greatest value for such item claimed by either Party or less than the least value for such item claimed by either Party. The decision of the Accounting Arbitrator shall be deemed final and binding upon the Parties and enforceable by any court of competent jurisdiction and the Accounting Arbitrator's final calculation of Actual Working Capital shall be deemed the "**Final Working Capital**," the Accounting Arbitrator's final calculation of Actual Cash and Actual Excess Cash Amount shall be deemed the "**Final Cash**" and "**Final Excess Cash Amount**," respectively, the Accounting Arbitrator's final calculation of Actual Company Indebtedness shall be deemed the "**Final Company Indebtedness**" and/or the Accounting Arbitrator's final calculation of Actual Company Transaction Expenses shall be deemed the "**Final Company Transaction Expenses**," absent manifest error. The fees and expenses of the Accounting Arbitrator shall be paid by Acquirer, on the one hand, and the Stockholders' Agent (on behalf of the Effective Time Holders), on the other hand, based upon the percentage that the portion of the contested amount not awarded to each party bears to the amount actually contested by such party, as determined by the Accounting Arbitrator.

(d) **Payment Following Final Determination of Adjustments.** Following the determination of the Final Working Capital, Final Cash and Final Excess Cash Amount, Final Company Indebtedness and Final Company Transaction Expenses, the Total Adjusted Merger Consideration shall be recalculated substituting the Final Working Capital for the Estimated Working Capital in the definition of Downward Closing Working Capital Adjustment, as applicable, substituting the Final Excess Cash Amount for the Estimated Excess Cash Amount in the definition of Total Adjusted Merger Consideration, substituting the Final Company Indebtedness for the Estimated Company Indebtedness in the definition of Total Adjusted Merger Consideration and substituting the Final Company Transaction Expenses for the Estimated Company Transaction Expenses in the definition of Total Adjusted Merger Consideration (the resulting amount of such recalculation, the "**Final Total Adjusted Merger Consideration**") and if (A) the Final Total Adjusted Merger Consideration is greater than the Total Adjusted Merger Consideration on the Closing Date, then, within two (2) Business Days after such determination, such difference shall be paid by Acquirer to Paying Agent (for further distribution to the Effective Time Holders in accordance with their Pro Rata Share) and if (B) the Total Adjusted Merger Consideration on the Closing Date is greater than the Final Total Adjusted Merger Consideration, then such difference shall be paid from the Escrow Fund to the Company.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the disclosure schedule of the Company delivered to Acquirer concurrently with the execution of this Agreement (the “*Company Disclosure Schedule*”) (each of which disclosures, in order to be effective, shall clearly indicate the Section and, if applicable, the Subsection of this Article II to which it relates (unless and only to the extent the relevance to other representations and warranties is reasonably apparent from the actual text of the disclosures without reference to extrinsic documentation or any independent knowledge on the part of the reader regarding the matter disclosed)), the Company represents and warrants to Acquirer as follows:

2.1 Organization, Standing and Power.

(a) Each of the Company and its Subsidiary is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of the Company and its Subsidiary has the corporate power to own its properties and to conduct its business as now being conducted and is duly qualified to do business and is in good standing under the laws of the jurisdiction of its incorporation and in each other jurisdiction where the failure to be so qualified and in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to be material and adverse to the Company and its Subsidiary as a whole. Neither the Company nor its Subsidiary is in violation of any of the provisions of its certificate of incorporation or bylaws or equivalent organizational or governing documents.

(b) Other than as set forth in Schedule 2.1(b) of the Company Disclosure Schedule, the Company does not have any current or past Subsidiaries. Except as set forth in Schedule 2.1(b) of the Company Disclosure Schedule neither the Company nor its Subsidiary owns any equity or similar interest in, or any interest convertible or exchangeable or exercisable for, any equity or similar interest in, any Person.

2.2 Capital Structure.

(a) The authorized capital stock of the Company consists solely of (i) 25,500,000 shares of Company Common Stock and (ii) 12,033,059 shares of Company Preferred Stock, of which 7,364,399 shares are designated as Company Series A Stock and 4,667,660 shares are designated as Company Series B Stock. As of the Agreement Date, a total of 10,325,931 shares of Company Common Stock, 7,365,399 of shares of Company Series A Stock and 4,667,660 shares of Company Series B Stock are issued and outstanding. The Company holds no shares of treasury stock. As of the Agreement Date, there are no other issued and outstanding shares of capital stock or other securities of the Company and no outstanding commitments or Contracts to issue any shares of capital stock or other securities of the Company other than pursuant to the exercise of outstanding Company Options under the Company Equity Plans. Schedule 2.2(a)-1 of the Company Disclosure Schedule sets forth, as of the Agreement Date, a true, correct and complete list of the name of each Person that is the registered owner of any shares of Company Capital Stock and the number and type of such shares so owned by such Person, and the number of shares of Company Common Stock that would be owned by such Person assuming conversion of all shares of Company Preferred Stock so owned by such Person giving effect to all anti-dilution and similar adjustments. The number of such shares set forth as being so owned by such Person constitutes the entire interest of such Person in the issued and outstanding capital stock or voting securities of the Company as of the Agreement Date. Except as set forth on Schedule 2.2(a)-2 of the Company Disclosure Schedule, all issued and outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and are free of any Encumbrances, preemptive rights, rights of first refusal or “put” or “call” rights created by statute, the certificate of incorporation or bylaws of the Company or any Contract to which the Company is a party or by which the Company is bound. There is no liability for dividends accrued and unpaid by the Company. The Company is not under any obligation to register under the Securities Act any shares of Company Capital Stock or any other securities of the Company

(b) The Company owns 100% of the issued and outstanding share capital of the Company's Subsidiary.

(c) As of the Agreement Date, the Company has reserved 3,805,000 shares of Company Common Stock for issuance to employees, non-employee directors and consultants pursuant to the Company Equity Plans, of which 1,461,769 shares are subject to outstanding and unexercised Company Options, and 1,017,300 shares remain available for issuance thereunder. Schedule 2.2(c) of the Company Disclosure Schedule sets forth, as of the Agreement Date, a true, correct and complete list of all Company Optionholders and the Company Options held by such Company Optionholders, whether or not such Company Options were granted under the Company Equity Plans, including the following information: (i) the number of shares of Company Common Stock subject to each such Company Option (including the number that are vested and the number that are unvested); (ii) the date of grant; (iii) the exercise or vesting schedule (and the terms of any acceleration thereof); (iv) the exercise price; (v) ; and (vi) for each Company Optionholder who is not a resident of the United States, the country of residence of such Company Optionholder. In addition, Schedule 2.2(c) of the Company Disclosure Schedule sets forth, as of the Agreement Date, a true, correct and complete list of all Company Optionholders who are not employees of the Company and which identifies whether such Company Optionholders are current or former non-employee directors, consultants, advisory board members, vendors, or other service providers to the Company and indicating whether such Person has ever been an employee of the Company. All issued and outstanding shares of Company Capital Stock were issued in compliance with all applicable Legal Requirements and all requirements set forth in applicable Contracts to which the Company is a party. The exercise price of all Company Options is at least equal to the fair market value of the Company Common Stock on the date such Company Options were granted or repriced, and the Company has not incurred and does not reasonably expect Acquirer to incur any liability or obligation to withhold taxes by reason of Section 409A of the Code upon the vesting of any Company Options.

(d) In respect of any Company Option granted to a service provider of the Company's Subsidiary (the "**UK Company Options**"): (i) in advance of the date of grant of any UK Company Option, the Company had agreed the "market value" (as that term is applied by the EMI Code to the calculation of any charge to income tax on exercise of such an option) of the shares under such UK Company Options with the Shares Valuation Division of HM Revenue & Customs (the "**HMRC Agreed Value**"); (ii) all UK Company Options were granted at an exercise price that was equal to or greater than the HMRC Agreed Value and within the period that the HMRC Agreed Value remained valid in respect of the relevant shares of Company Capital Stock; (iii) all UK Company Options met, at the time of grant, and continue to meet all of the requirements for enterprise management incentive options under Schedule 5 to ITEPA (including, for the avoidance of doubt, the requirement at paragraph 37(4) to Schedule 5 to ITEPA relating to details of any restrictions to which the relevant shares of Company Capital Stock were subject); (iv) all UK Company Options have been validly notified to HMRC within 92 days of the relevant date of grant (including, for the avoidance of doubt, reflecting the requirement that each Company Optionholder has made and signed a written declaration in relation to his or her UK Company Option in accordance with paragraph 44(6) of Schedule 5 to ITEPA); (v) there have been no disqualifying events under section 534 or 536 of ITEPA; and (vi) there have been no material amendments to any of the terms of any UK Company Options. No claims have arisen nor, to the Knowledge of the Company, are expected to arise in respect of any UK Company Options and all HMRC Annual Share Scheme Returns have been correctly completed and filed with HMRC within the relevant time period and no penalties have arisen in respect of any such returns or, to the Knowledge of the Company, are expected to arise in respect of any such returns.

(e) No bonds, debentures, notes or other indebtedness of the Company or its Subsidiary (i) granting its holder the right to vote on any matters on which its securityholders may vote (or that is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is any way based upon or derived from capital or voting stock of the Company or its Subsidiary, is issued or outstanding as of the Agreement Date (collectively, “**Company Voting Debt**”).

(f) Except for the Company Options described in Schedule 2.2(c) of the Company Disclosure Schedule, there are no options, warrants, calls, rights or Contracts of any character to which the Company or its Subsidiary is a party or by which it is bound obligating the Company or its Subsidiary to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of any Company Capital Stock, options, warrants or other rights to purchase shares of Company Capital Stock or other securities of the Company or its Subsidiary, or any Company Voting Debt, or obligating the Company or its Subsidiary to grant, extend, accelerate the vesting and/or repurchase rights of, change the price of, or otherwise amend or enter into any such option, warrant, call, right or Contract. Except as set forth on Schedule 2.2(f)-1 of the Company Disclosure Schedule, there are no Contracts relating to voting, purchase or sale of any shares of Company Capital Stock or any share capital of its Subsidiary (i) between or among the Company or its Subsidiary and any other Person, other than (x) written Contracts granting the Company the right to purchase unvested shares upon termination of employment or service and (y) the Company’s standard form agreements under the Company Equity Plans and (ii) to the Knowledge of the Company, between or among any of the Company Securityholders. Except as set forth on Schedule 2.2(f)-2 of the Company Disclosure Schedule, neither the Company Equity Plans nor any Contract of any character to which the Company or its Subsidiary is a party to or by which the Company or its Subsidiary is bound relating to any Company Options requires or otherwise provides for any accelerated vesting of any Company Options in connection with the Merger or any other transaction contemplated by this Agreement or upon termination of employment or service with Acquirer, the Company, the Company’s Subsidiary, the Surviving Corporation, or any other event, before, upon or following the Merger or otherwise. True, correct and complete copies of the Company Equity Plans and the Company’s standard forms of all Contracts and instruments relating to or issued under the Company Equity Plans (including executed copies of all Contracts relating to each Company Option and the shares of Company Capital Stock purchased under such option) have been provided to Acquirer, and such Company Equity Plans and standard form Contracts have not been amended, modified or supplemented since being provided to Acquirer, and there are no agreements, understandings or commitments to amend, modify or supplement such Company Equity Plans or standard form Contracts in any case from those provided to Acquirer.

(g) The Closing Spreadsheet will accurately set forth, as of the Closing, the name of each Person that is the registered owner of any shares of Company Capital Stock and/or Company Options and the number and kind of such shares so owned, or subject to Company Options so owned, by such Person. The number of such shares set forth as being so owned, or subject to Company Options so owned, by such Person will constitute the entire interest of such Person in the issued and outstanding capital stock, voting securities or other securities of the Company. As of the Closing, no other Person not disclosed in the Closing Spreadsheet will have a right to acquire any shares of Company Capital Stock and/or Company Options from the Company. In addition, the shares of Company Capital Stock and/or Company Options disclosed in the Closing Spreadsheet will be, as of the Closing, free and clear of any Encumbrances created by the certificate of incorporation or bylaws of the Company or any Contract to which the Company or its Subsidiary is a party or by which it is bound.

2.3 Authority; Noncontravention.

(a) The Company has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, subject only to the approval of such transactions by the Company Stockholders as contemplated herein. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the Company Board. This Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation

of the Company enforceable against the Company in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. The Company Board, by resolutions duly adopted (and not thereafter modified or rescinded) by the unanimous vote of the Company Board, has approved and adopted this Agreement and approved the Merger, determined that this Agreement and the terms and conditions of the Merger and this Agreement are advisable and in the best interests of the Company and the Company Stockholders, directed that the adoption of this Agreement be submitted to the Company Stockholders for consideration and recommended that all of the Company Stockholders adopt this Agreement, and determined the fair market value of each class and series of Company Capital Stock for purposes of Chapter 13 of the CGCL. The affirmative votes of (A) the Company Stockholders holding a majority of the outstanding shares of Company Common Stock and Company Preferred Stock (voting together as a single voting class on an as converted to Company Common Stock basis), (B) the Company Stockholders holding a majority of the outstanding shares of Company Preferred Stock (voting together as a separate voting class on an as converted to Company Common Stock basis) and (C) the Company Stockholders holding a majority of the outstanding shares of Company Common Stock, are the only votes of the holders of shares of Company Capital Stock necessary to adopt this Agreement and approve the Merger (the “**Company Stockholder Approval**”). The affirmative vote of the Company Stockholders listed on Schedule A is sufficient for the Company Stockholder Approval.

(b) The execution and delivery of this Agreement by the Company and the consummation of the transactions contemplated by this Agreement will not, (i) result in the creation of any Encumbrance on any of the material properties or assets of the Company or its Subsidiary or any of the shares of Company Capital Stock or any share capital of its Subsidiary, or (ii) conflict with, or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person pursuant to, (A) any provision of the certificate of incorporation or bylaws or other equivalent organizational or governing documents of the Company or its Subsidiary, in each case as amended to date, (B) any Material Contract, or (C) any Legal Requirements applicable to the Company or its Subsidiary or any of their material properties or assets.

(c) Except for the filing of the Certificate of Merger, as provided in Section 1.5, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to the Company or its Subsidiary in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

2.4 Financial Statements.

(a) The Company has delivered to Acquirer the audited financial statements of the Company and its Subsidiary, on a consolidated basis, for the years ended December 31, 2017 and the unaudited financial statements of the Company and its Subsidiary, on a consolidated basis, for the years ended December 31, 2016 and December 31, 2015 (including, in each case, balance sheets, statements of operations and statements of cash flows) and the unaudited financial statements of the Company and its Subsidiary, on a consolidated basis, for the eight (8) months ended August 31, 2018 (including, in each case, balance sheets, statements of operations and statements of cash flows) (collectively, the “**Financial Statements**”). The Financial Statements (i) are derived from and in accordance with the books and records of the Company and its Subsidiary, (ii) complied as to form in all material respects with applicable accounting requirements with respect thereto as of their respective dates, (iii) have been prepared in accordance with the Company Accounting Principles (except as set forth on Schedule 2.4(a) of the Company Disclosure Schedule) applied on a consistent basis throughout the periods indicated and consistent with each other and (iv) fairly present in all material respects the financial condition of the Company and its Subsidiary at the dates therein indicated and the results of operations and cash flows of the Company and its Subsidiary for the periods therein specified (subject, in the case of unaudited interim period financial statements, to normal recurring year-end adjustments, none of which individually or in the aggregate will be material in amount).

(b) Neither the Company nor its Subsidiary has any Liabilities of any nature other than (A) those set forth or adequately provided for in the balance sheet included in the Financial Statements as of August 31, 2018 (the “**Company Balance Sheet**”), (B) those incurred in the conduct of the Company’s business since the date of the Company Balance Sheet (the “**Company Balance Sheet Date**”) in the ordinary course of business consistent with past practice that are of the type that ordinarily recur and (C) those incurred by the Company in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby. Except for Liabilities reflected in the Financial Statements, the Company has no off balance sheet Liability of any nature 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. All reserves that are set forth in or reflected in the Company Balance Sheet have been established in accordance with the Company Accounting Principles consistently applied. Notwithstanding anything to the contrary in this Section 2.4(b), this Section 2.4(b) shall not constitute any representation or warranty with respect to matters for which there is a specific representation contained in Section 2.10 (Intellectual Property), Section 2.12 (Taxes) or Section 2.13 (Employee Benefit Plans and Employee Matters).

(c) The Company has established and maintains a system of internal accounting controls that is reasonable for a company of its size and profile and that are intended to provide reasonable assurances (i) that transactions, receipts and expenditures of the Company and its Subsidiary are being executed and made only in accordance with appropriate authorizations of management and the Company Board, (ii) that transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP and (B) to maintain accountability for assets, (iii) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company and its Subsidiary and (iv) that the amount recorded for assets on the books and records of the Company is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Neither the Company nor its Subsidiary nor, to the Knowledge of the Company, any current or former employee, consultant or director of the Company or its Subsidiary, has identified or been made aware of any actual and intentional fraud, whether or not material, that involves the Company’s management or other current or former employees, consultants or directors of the Company or its Subsidiary who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or its Subsidiary, or any claim or allegation regarding any of the foregoing. Neither the Company nor its Subsidiary nor, to the Knowledge of the Company, any director, officer, employee, accountant or representative of the Company or its Subsidiary has received or otherwise had or obtained Knowledge of any material complaint, allegation, assertion or claim, whether written or oral, in each case, regarding deficient accounting practices, procedures, methodologies or methods of the Company or its Subsidiary or their internal accounting controls, or any material inaccuracy in the Company’s financial statements. No attorney representing the Company or its Subsidiary, whether or not employed thereby, has reported to the Company Board or any committee thereof or to any director or officer of the Company or its Subsidiary evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company, its Subsidiary or any of their officers, directors, employees or agents. There are no significant deficiencies or material weaknesses in the design or operation of the Company’s internal controls that would reasonably be likely to materially and adversely affect the Company’s or its Subsidiary’s ability to record, process, summarize and report financial data. At the Company Balance Sheet Date, there were no material loss contingencies (as such term is used in Statement of Financial Accounting Standards No. 5 (“**Statement No. 5**”) issued by the Financial Accounting Standards Board in March 1975) that are not adequately provided for in the Company Balance Sheet as required by said Statement No. 5. There has been no material change in the Company’s internal accounting policies since January 1, 2015, except as described in the Financial Statements.

(d) Schedule 2.4(d) of the Company Disclosure Schedule sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company or its Subsidiary maintains accounts of any nature and the names of all Persons authorized to draw thereon or make withdrawals therefrom.

(e) Schedule 2.4(e) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Company Indebtedness (excluding clause (vi) thereof) as of the Agreement Date, including, for each item of Company Indebtedness, the Contract governing the Company Indebtedness and, as and to the extent applicable, the interest rate, maturity date and any assets or properties securing such Company Indebtedness. All Company Indebtedness (with respect to borrowed money indebtedness) may be prepaid at the Closing without penalty under the terms of the Contracts governing such Company Indebtedness.

2.5 Absence of Certain Changes. Except for transactions specifically contemplated in this Agreement, since the date of the Company Balance Sheet Date: (a) the business of the Company and its Subsidiary has been conducted only in, neither the Company nor its Subsidiary, has 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 no event has occurred or circumstances exist that would reasonably be expected to result in or cause a Material Adverse Effect; and (c) neither the Company nor its Subsidiary have taken any action that if taken between the Agreement Date and the Closing would require the prior written consent of Acquirer pursuant to Section 4.2 of this Agreement.

2.6 Litigation. There is no private or governmental action, suit, proceeding, claim, mediation or arbitration or investigation pending before any Governmental Entity, arbitrator, mediator, or other body or, to the Knowledge of the Company or its Subsidiary, threatened against the Company or its Subsidiary or any of their respective material assets or material properties or any of their respective directors, officers or, to the Knowledge of the Company, employees (in their capacities as such or relating to their employment, services or relationship with the Company or its Subsidiary). There is no judgment, decree, injunction or order against the Company or its Subsidiary, any of their assets or properties, or, to the Knowledge of the Company or its Subsidiary, any of its directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company or its Subsidiary). Neither the Company nor its Subsidiary has any action, suit, proceeding, claim, mediation, arbitration or investigation pending before any Governmental Entity against any other Person.

2.7 Restrictions on Business Activities. There is no Contract, judgment, injunction, order or decree binding upon the Company or its Subsidiary that has or would reasonably be expected to have, whether before or after consummation of the Merger, the effect of prohibiting or impairing in any material respect any current business practice of the Company or its Subsidiary, any acquisition of property by the Company or its Subsidiary or the conduct of business by the Company and its Subsidiary as currently conducted.

2.8 Compliance with Laws; Company Authorizations.

(a) Each of the Company and its Subsidiary has complied in all material respects with, is not in material violation of, and has not received any written notices of violation with respect to, any Legal Requirement with respect to the conduct of its business, or the ownership or operation of its business. Neither the Company nor its Subsidiary, nor any of their directors, officers, Affiliates or employees (in each case in their capacities as such) has given, offered, paid, promised to pay or authorized payment of any money, any gift or anything of value, with the purpose of influencing any act or decision of the recipient in his or her official capacity or inducing the recipient to use his or her influence to affect an act or decision of a government official or employee, to any (i) governmental official or employee, (ii) political party or candidate thereof or (iii) other Person, in each case while knowing that all or a portion of such money or thing of value would be given or offered for the purpose of obtaining or retaining business or securing any improper advantage in violation of Legal Requirements.

(b) The Company has obtained each federal, state, county, local or foreign governmental consent, license, permit, grant or other authorization of a Governmental Entity (i) pursuant to which the Company and its Subsidiary currently operates or holds any interest in any of its assets or properties or (ii) that is required for the operation of the Company's and its Subsidiary's business or the holding of any such interest, in each case except as would not, individually or in the aggregate, reasonably be likely to be material and adverse to the Company and its Subsidiary taken as a whole (after giving effect to such exception, all of the foregoing consents, licenses, permits,

grants and other authorizations, collectively, the “**Company Authorizations**”), and all of the Company Authorizations are in full force and effect. None of the Company Authorizations will be terminated or materially impaired, or will become terminable, in whole or in part, solely as a result of the consummation of the transactions contemplated by this Agreement.

2.9 Title to Property and Assets.

(a) Except as described on Schedule 2.9(a) of the Company Disclosure Schedule, the Company and its Subsidiary have good and valid title to all of the tangible properties, and interests in personal properties and assets reflected on the Company Balance Sheet or acquired after the Company Balance Sheet Date (except properties and assets, or interests in properties and assets, sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice), or, with respect to leased properties and assets, valid leasehold interests in such properties and assets that afford the Company or its Subsidiary valid leasehold possession of the properties and assets that are the subject of such leases, in each case, free and clear of all Encumbrances, except (i) Permitted Encumbrances, (ii) such imperfections of title and non-monetary Encumbrances as do not and will not in any material respect detract from or interfere with the use of the properties subject thereto or affected thereby or otherwise impair business operations involving such properties and (iii) liens securing indebtedness that are reflected on the Company Balance Sheet. The property and equipment of the Company and its Subsidiary that are used in the operations of their respective businesses are in good operating condition and repair, subject to normal wear and tear and (B) not obsolete, dangerous or in need of renewal or replacement, except for renewal or replacement in the ordinary course of business consistent with past practice.

(b) Schedule 2.9(b) of the Company Disclosure Schedule identifies each parcel of real property leased by the Company or its Subsidiary. The Company has heretofore provided to Acquirer true, correct and complete copies of all leases, subleases and other Contracts under which the Company or its Subsidiary uses or occupies or has the right to use or occupy, now or in the future, any real property or facility, including all modifications, amendments and supplements thereto (each a “**Real Property Lease**”). Neither the Company nor its Subsidiary currently owns any real property nor has ever owned any real property. Notwithstanding anything to the contrary herein, nothing in this Section 2.9 shall apply to Intellectual Property, which is governed by Section 2.10 or to contractual rights which are governed by Section 2.18. Each Real Property Lease is a legal, valid and binding obligation, enforceable in accordance with its terms, of the Company and, to the Knowledge of the Company, the other parties thereto, is in full force and effect in accordance with its terms. There exists no material default by the Company or, to the Knowledge of the Company, by any other party under any Real Property Lease.

2.10 Intellectual Property.

(a) As used in this Agreement, the following terms shall have the meanings indicated below:

(i) “**Company IP Rights**” means (A) any and all Intellectual Property used in the conduct of the business of the Company and (B) any and all other Intellectual Property owned by the Company.

(ii) “**Company-Owned IP Rights**” means (A) Intellectual Property that is owned or purported by the Company to be owned by or exclusively licensed to the Company and (B) Intellectual Property that was developed for the Company by full or part time employees or consultants of the Company and assigned to the Company.

(iii) “**Company Products**” means all products or services developed, marketed, licensed to third parties, sold, distributed or performed by or on behalf of the Company and all products or services currently under development by the Company and scheduled for release in the ninety (90) days immediately following the Agreement Date.

(iv) **“Company Registered Intellectual Property”** means all United States, international and foreign (A) patents and patent applications (including provisional applications), (B) registered trademarks or service marks, applications to register trademarks or service marks, intent-to-use applications, or other registrations or applications related to trademarks or service marks, (C) registered Internet domain names, (D) registered copyrights and applications for copyright registration and (E) any other Intellectual Property, in each case, that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any governmental authority owned by, registered or filed in the name of, the Company.

(v) **“Company Source Code”** means, collectively, any software source code, or any material proprietary information or algorithm contained in or relating to any software source code, of any Company-Owned IP Rights or Company Products.

(vi) **“HIPAA”** means collectively the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by the Health Information Technology for Clinical Health Act of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations, when each is effective and as each is amended from time to time.

(vii) **“Information Privacy and Security Laws”** means all applicable Legal Requirements concerning the protection, transfer, confidentiality, privacy or security of Protected Information, and all regulations promulgated by Governmental Entities thereunder, including but not limited to HIPAA, the Gramm-Leach-Bliley Act, the Federal Information Security Management Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Federal Trade Commission Act, the Privacy Act of 1974, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the General Data Protection Regulation 2016/679 and Children’s Online Privacy Protection Act.

(viii) **“Intellectual Property”** means any and all industrial and intellectual property and all rights associated therewith throughout the world, including all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, research, technology, technical data, proprietary processes and formulae, algorithms, specifications, customer lists and supplier lists, all industrial designs and any registrations and applications therefor, all trade names, logos, trade dress, trademarks and service marks, trademark and service mark registrations, trademark and service mark applications, and any and all goodwill associated with and symbolized by the foregoing items, Internet domain name registrations, Internet and World Wide Web URLs or addresses, all works of authorship, copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto, all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, all computer software, including all source code, object code, firmware, files, records and data, all databases, data collections, curated data content, and data layers and all rights therein, however denominated, and any similar or equivalent rights to any of the foregoing, and all tangible embodiments of the foregoing.

(ix) **“IT Assets”** means all information technology, including hardware, software, firmware, networks, equipment, computer systems and connecting media and related infrastructure used by or on behalf of the Company.

(x) **“PCI DSS”** means the Payment Card Industry Data Security Standard, issued by the Payment Card Industry Security Standards Council, as may be revised from time to time.

(xi) **“Protected Information”** means any information in any media that (i) identifies or is reasonably capable of identifying an individual, and any other information that constitutes personal information under any Information Privacy and Security Law; (ii) is governed, regulated, or protected by one or more Information Privacy and Security Laws or PCI DSS; or (iii) the Company receives from or on behalf of a customer of the Company and is subject to a data security or confidentiality obligation.

(xii) “*Security Breach*” means any (i) loss or misuse (by any means) of Protected Information; (ii) inadvertent, unauthorized, and/or unlawful acquisition, control, modification, destruction, access, collection, use, storage, disclosure, transfer, corruption, sale, or rental of Protected Information; (iii) unauthorized or unlawful control of or access to any IT Asset; or (iv) other act or omission that compromises or may compromise the security, confidentiality, or integrity of Protected Information.

(xiii) “*Third-Party Intellectual Property Rights*” means any Intellectual Property owned by a third party.

(b) The Company owns or has a valid license to use all Intellectual Property that is used in or necessary for the conduct of the business of the Company as currently conducted by the Company.

(c) The Company has not transferred ownership of any Intellectual Property that is or was Company-Owned IP Rights, to any third party, knowingly permitted the Company’s rights in any Intellectual Property that is or was Company-Owned IP Rights to enter the public domain, or allowed any Intellectual Property for which the Company has submitted an application or obtained a registration to lapse (other than through the expiration of registered Intellectual Property at the end of its maximum statutory term), except where the Company has in its reasonable business judgment elected to allow such Intellectual Property to lapse.

(d) The Company owns and has good and sole and exclusive title to each item of Company-Owned IP Rights (other than Company-Owned IP Rights that are exclusively licensed to the Company) and each item of Company Registered Intellectual Property, free and clear of any Encumbrances (other than Permitted Encumbrances). The right, license and interest of the Company in and to all Third-Party Intellectual Property Rights for which the Company has been granted a license or other authorization or right from a third party are free and clear of all Encumbrances (excluding restrictions contained in the licenses therefor, and Permitted Encumbrances).

(e) Neither the execution and delivery or effectiveness of this Agreement nor the performance of the Company’s obligations under this Agreement will cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of, any Company-Owned IP Right, or impair the right of the Company to use, possess, transfer, sell, license or otherwise exploit any Company-Owned IP Right or portion thereof. After the Closing, all Company-Owned IP Rights will be fully transferable, alienable or licensable by Acquirer without restriction and without payment of any kind to any third party.

(f) Schedule 2.10(f) of the Company Disclosure Schedule lists all Company Products currently offered for purchase, support or maintenance, by name and version number.

(g) Schedule 2.10(g) of the Company Disclosure Schedule lists all Company Registered Intellectual Property including the jurisdictions in which each such item of Intellectual Property has been issued or registered or in which any application for such issuance and registration has been filed, or in which any other filing or recordation has been made and all filing, registration and issuance dates, all application, registrations and grant numbers, and all registered owners for each such item. Schedule 2.10(g) of the Company Disclosure Schedule also sets forth a list of all payments to and filings with any Governmental Entity that are required to be made, as of the Agreement Date, and actions that are required to be made by the Company within 120 days of the Agreement Date with respect to any of the Company Registered Intellectual Property in order to avoid prejudice to, impairment or abandonment of such Company Registered Intellectual Property.

(h) Each item of Company Registered Intellectual Property is valid and subsisting (or in the case of applications, applied for), all registration, maintenance and renewal fees currently due in connection with such Company Registered Intellectual Property have been paid and all documents, recordings and certificates in connection with such Company Registered Intellectual Property currently required to be filed have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Company Registered Intellectual Property and recording the Company's ownership interests therein. The foregoing representations in this Section 2.10(h) shall not apply to Company Registered Intellectual Property that the Company has in its reasonable business judgment elected to abandon or allow to expire or lapse.

(i) The Company is not and shall not be as a result of the execution and delivery or effectiveness of this Agreement or the performance of the Company's obligations under this Agreement, in breach of any Contract governing any Company IP Rights (the "**Company IP Rights Agreements**") and the consummation of the transactions contemplated by this Agreement will not result in the modification, cancellation, termination, suspension of, or acceleration of any payments with respect to the Company IP Rights Agreements, or give any non-Company party to any Company IP Rights Agreement the right to do any of the foregoing. Following the Closing, the Surviving Corporation (as wholly owned by Acquirer) will be permitted to exercise all of the Company's rights under the Company IP Rights Agreements to the same extent the Company would have been able to had the transactions contemplated by this Agreement not occurred and without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments that the Company would otherwise be required to pay.

(j) None of the Company IP Rights Agreements grants any third party exclusive rights to or under any Company IP Rights or grants any third party the right to sublicense any Company IP Rights.

(k) There are no royalties, honoraria, fees or other payments payable by the Company to any Person (other than salaries or consulting fees payable to employees, consultants and independent contractors not contingent on or related to use of their work product) as a result of the ownership, use, possession, license-in, license-out, sale, marketing, advertising or disposition of any Company-Owned IP Rights by the Company.

(l) To the Knowledge of the Company, there is no unauthorized use, unauthorized disclosure, infringement or misappropriation of any Company-Owned IP Rights, by any third party, including any employee or former employee of the Company. The Company has not brought any action, suit or proceeding for unauthorized use, unauthorized disclosure, infringement or misappropriation of any Intellectual Property or breach of any Company IP Rights Agreement.

(m) The Company has not been sued in any suit, action or proceeding (or received any written notice or, to the Knowledge of the Company, threat) that alleges unauthorized use, unauthorized disclosure, infringement or misappropriation of any Intellectual Property right of any third party or that contests the validity, ownership or right of the Company to exercise any Intellectual Property right. The Company has not received any unsolicited written communication that involves an offer or invitation to license or grant any other rights or immunities under any Third-Party Intellectual Property Right.

(n) The Company has no Liability for unauthorized use, unauthorized disclosure, infringement or misappropriation of the Intellectual Property rights of any third party or for unfair competition or unfair trade practices under the laws of any jurisdiction. The operation of the business of the Company, including (i) the design, development, manufacturing, reproduction, marketing, licensing, sale, offer for sale, importation, distribution, provision and/or use of any Company Product and (ii) the Company's use of any product, device or process used in the business of the Company, has not, does not and will not infringe or misappropriate the Intellectual Property of any third party and does not constitute unauthorized use or unauthorized disclosure of the Intellectual Property of any third party, or constitute unfair competition or unfair trade practices under the laws of any jurisdiction and to the Knowledge of the Company, there is no substantial basis for a claim relating to any of the foregoing.

(o) None of the Company-Owned IP Rights, the Company Products, or the Company is subject to any proceeding or outstanding order, Contract or stipulation restricting in any manner the use, transfer or licensing by the Company of any Company-Owned IP Right or any Company Product, or that may adversely affect the ownership, scope, validity, registrability, use, right to use, right to register or enforceability of any such Company-Owned IP Right or Company Product.

(p) The Company has not received any opinion of its counsel that any Company Product or the operation of the business of the Company, as previously or currently conducted by the Company, infringes or misappropriates or uses or discloses without authorization any Third-Party Intellectual Property Rights.

(q) The Company has secured from all of its consultants, employees and independent contractors who independently or jointly contributed to the conception, reduction to practice, creation or development of any Company Product or Intellectual Property for the Company, unencumbered and unrestricted sole and exclusive ownership of, all such third party's Intellectual Property in such contribution that the Company does not already own by operation of law and such third party has not retained any rights or licenses with respect thereto. Without limiting the foregoing, the Company has obtained proprietary information and invention disclosure and assignment agreements from all current and former employees and consultants of the Company. Accurate and complete copies of the agreements referred to in this Section 2.10(q), or the standard form of Contract used therefor (without material deviation), are in the possession and control of the Company and have been provided to Acquirer prior to the date hereof. Schedule 2.10(q) of the Company Disclosure Schedule sets forth a complete list of each current and former employee, consultant, and independent contractor who excluded any Intellectual Property (including existing Intellectual Property owned by such Person) from the scope of any assignment obligation or agreement referred to in this Section 2.10(q), other than, with respect to employees, Intellectual Property that is required to be excluded by California Labor Code Section 2870. No current or former employee, consultant or independent contractor of the Company has any right, license, claim or interest whatsoever in or with respect to any Company-Owned IP Rights.

(r) To the Knowledge of the Company, no current or former employee, consultant or independent contractor of the Company (i) is using or has used trade secrets or proprietary information of others without permission, or is in violation of any term or covenant of any Contract relating to employment, invention disclosure (including patent disclosure), invention assignment, non-disclosure or any other Contract with any other party, by virtue of such employee's, consultant's or independent contractor's being employed by, or performing services for, the Company or (ii) has developed any technology, software or other copyrightable, patentable or otherwise proprietary work for the Company that is subject to any agreement under which such employee, consultant or independent contractor has assigned or otherwise granted to any third party any rights (including Intellectual Property rights) in or to such technology, software or other copyrightable, patentable or otherwise proprietary work.

(s) To the extent that any Intellectual Property that is or was Third-Party Intellectual Property Rights is incorporated into, or integrated or bundled with, any of the Company Products, the Company has a written agreement with such third party with respect thereto pursuant to which the Company either (i) has obtained complete, unencumbered and unrestricted ownership of, and is the sole and exclusive owner of, such Intellectual Property by operation of law or by valid assignment or (ii) has obtained perpetual, non-terminable (other than for breach) licenses (sufficient for the conduct of its business as currently conducted by the Company) to all such Third-Party Intellectual Property Rights.

(t) The Company has taken commercially reasonable steps to protect and preserve the confidentiality of confidential or non-public information included in the Company IP Rights ("**Confidential Information**"). All use or disclosure of Confidential Information owned by the Company by or to a third party has been pursuant to the terms of a written Contract between the Company and such third party. All use, disclosure or appropriation by the Company of Confidential Information not owned by the Company has been pursuant to the terms of a written agreement between the Company and the owner of such Confidential Information, or is otherwise lawful. All current and former employees and consultants of the Company having access to Confidential Information

or proprietary information of the Company or any of its respective customers or business partners have executed and delivered to the Company an agreement regarding the protection of such Confidential Information or proprietary information (in the case of proprietary information of the Company's customers and business partners, to the extent required by such customers and business partners).

(u) Schedule 2.10(u) of the Company Disclosure Schedule lists all software or other material that is distributed as "free software," "open source software" or under similar licensing or distribution terms (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, and the Apache License) ("**Open Source Materials**") and that is used in or by the Company Products in any way (including as a backend component of any Company Products), and describes the manner in which such Open Source Materials are (or were) being used (the term "use" with respect to Open Source Materials shall include modification and/or distribution by the Company). The Company is in full compliance with the terms and conditions of all licenses for the Open Source Materials.

(v) The Company has not (i) incorporated Open Source Materials into, or combined Open Source Materials with, any Company-Owned IP Rights or Company Products, (ii) distributed Open Source Materials in conjunction with any Company-Owned IP Rights or Company Products or (iii) used Open Source Materials, in each case ((i), (ii) or (iii)) in such a way that such Open Source Materials or the use thereof creates, or purports to create, any obligation for the Company to grant, to any third party, any rights, licenses, or immunities under any Company-Owned IP Rights (including the incorporation, distribution or use of any Open Source Materials that: (1) require or could require, as a condition of use, modification and/or distribution of such Open Source Materials, that other software incorporated into, combined with, derived from or distributed with such Open Source Materials be (A) disclosed or distributed in source code form, (B) licensed for the purpose of making derivative works, (C) redistributable at no charge, or (D) licensed under some or all of the terms of the license for such Open Source Materials; or (2) impose or could impose restrictions on licensing terms for or otherwise abridge, restrict, or withdraw rights or benefits in respect of the enforcement of any Company-Owned IP Rights). Without limiting the foregoing, except as set forth on Schedule 2.10(v) of the Company Disclosure Schedule, the Company has not used any Open Source Materials pursuant to any version of the Affero General Public License or any other license having similar terms that trigger source code obligations under the license based solely on making the functionality of the Open Source Materials available in such a fashion that users may interact with it remotely through a computer network and has not distributed any versions of Microsoft jQuery Unobtrusive Validation or JPEGCam (or any portions of such Open Source Materials) to any customer or end-user. No Company-Owned IP Rights have become licensed under the terms of any Open Source Materials license or distribution terms through combination with Open Source Materials or otherwise.

(w) All Company Products sold, licensed, leased or delivered by the Company to customers and all services provided by or through the Company to customers on or prior to the Closing Date conform in all material respects to applicable contractual commitments, express, statutory and implied warranties (to the extent not subject to legally effective express exclusions thereof), and conform in all material respects to advertising and marketing materials and to applicable product or service specifications or documentation. The Company has no Liability (and, to the Knowledge of the Company, there is no legitimate basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against the Company giving rise to any material Liability relating to the foregoing obligations) for replacement or repair of Company Products or other damages in connection therewith in excess of any reserves therefor reflected on the Company Balance Sheet. The Company has not marked any Company Product with, or used in connection with the advertising of any Company Product, an incorrect or expired U.S. patent number, or any other incorrect indication that the manufacture, use, sale, offer for sale or importation into the United States of any Company Product was covered by or licensed under a U.S. patent. The Company has not falsely indicated on, or in connection with the advertising of, a Company Product that an application for a U.S. patent had been made that, if issued, would cover the manufacture, use, sale, offer for sale or importation into the United States of the Company Product.

(x) The Company has taken commercially reasonable steps to document the testing of all Company Products and such documentation is retained and is available internally at the Company. The Company has taken commercially reasonable steps to document all known bugs, errors and defects in all the Company Products, and such documentation is retained and is available internally at the Company. The Company has taken commercially reasonable steps and has implemented commercially reasonable procedures to protect its information technology systems (including software and data) from Contaminants. As used herein, “**Contaminants**” means all “back doors,” “time bombs,” “Trojan horses,” “worms,” “drop dead devices,” “viruses” and other software routines and hardware components that may or may be used to (i) permit unauthorized access to or unauthorized disablement or erasure of any software, data or information technology system or (ii) otherwise interrupt, destroy or otherwise materially adversely affect the functionality or operation of any Company Product. There has not been in the three (3) years prior to the Agreement Date (i) any material unauthorized intrusions or breaches of the security of the information technology systems of the Company, (ii) any material malfunction of such information technology systems, or (iii) any material unplanned downtime or service interruption with respect to such information technology systems.

(y) For all software used by the Company in providing services, or in developing or making available any of the Company Products, the Company has implemented all security patches or security updates that are generally available for that software and that address vulnerabilities that are applicable to the Company’s use of that software. All Company Source Code is maintained in a source code management system with commercially reasonable revision history, management, tracking and security measures and safeguards, and such Company Source Code and associated documentation have been written in a clear and professional manner so that they may be understood, modified, used and maintained by a reasonably skilled and competent programmer.

(z) No (i) government funding, (ii) facilities of a university, college, other educational institution or research center or (iii) funding from any Person (other than funds received in consideration for shares of Company Capital Stock) was used in the development of the Company-Owned IP Rights. To the Knowledge of the Company, no current or former employee, consultant or independent contractor of the Company, who was involved in, or who contributed to, the creation or development of any Company-Owned IP Rights, has performed services for any government, university, college or other educational institution or research center during a period of time during which such employee, consultant or independent contractor was also performing services for the Company.

(aa) Other than contributions made by the Company to Open Source Materials (as generally described on Schedule 2.10(aa) of the Company Disclosure Schedule), neither the Company nor any other Person then acting on their behalf has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any Company Source Code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, result in the disclosure, delivery or license by the Company or any Person then acting on their behalf to any Person of any Company Source Code. Schedule 2.10(aa) of the Company Disclosure Schedule identifies each Contract pursuant to which the Company has deposited, or is or may be required to deposit, with an escrowholder or any other Person, any of the Company Source Code, and describes whether the execution of this Agreement or any of the transactions contemplated by this Agreement, in and of itself, would reasonably be expected to result in the release from escrow of any Company Source Code.

(bb) The Company is not now nor has it ever been a member or promoter of, or a contributor to, any industry standards body or any similar standards organization that has the right to require or obligate the Company to grant or offer to any other Person any license or right to any Company-Owned IP Rights. In addition, if any Company-Owned IP Rights were acquired from a Person other than an employee of or contractor to Company, then such Person is not now nor has ever been a member or promoter of, or a contributor to, any industry standards body or any similar standards organization that required or obligated such Person to grant or offer to any other Person any license or right to such Company-Owned IP Right. The Company has no present obligation (and there is no substantial basis for the Company to expect that there will be a future obligation) to grant or offer to any other Person any license

or right to any Company-Owned IP Rights by virtue of Company's or any other Person's membership in, promotion of, or contributions to any industry standards body or any similar standards organization.

(cc) The Company complies and at all times has complied with (i) all applicable Legal Requirements, including all applicable Information Privacy and Security Laws, (ii) PCI DSS, (iii) any Contracts to which the Company is or has been a party, and (iv) all applicable consents and authorizations in effect relating to the use, receipt, collection, storage, disclosure, disposal, transfer, and security of any Protected Information collected by the Company or by third parties having authorized access to the records of the Company. Without limiting the foregoing, the Company has obtained all necessary and appropriate consents, permissions, and rights to use, collect, store, disclose, and transfer the Protected Information in the possession or under the control of the Company in connection with the operation of the Company. The Company has posted, in accordance with Information Privacy and Security Laws, privacy policies governing its use of Protected Information on all websites and mobile applications made available by the Company, and the Company has complied at all times with such privacy policies, all former published privacy policies, and any other public representations related to the Company's or any Subsidiary's privacy or data security practices. The (A) collection, storage, processing, transfer, sharing and destruction of Protected Information in connection with the transactions contemplated by this Agreement and (B) execution, delivery and performance of this Agreement and the other agreements and instruments contemplated hereby and the consummation of the transactions contemplated hereby and thereby will comply with all applicable Information Privacy and Security Laws and with the Company's privacy representations and policies.

(dd) The Company (i) has not received a complaint regarding the Company's collection, use, storage, transfer, or disclosure of Protected Information; (ii) is not, to the Knowledge of the Company, under investigation by any Governmental Entity for a violation of any Information Privacy and Security Laws; or (iii) has not received any notices or audit requests from a Governmental Entity relating to any such violations.

(ee) Where applicable and required by applicable law, the Company has entered into a Contract that addresses the provisions for "business associate contracts" required by 45 C.F.R. § 164.504(e) or § 164.314(a), as amended, with the applicable third party in each instance where (i) the Company acts as a business associate (as defined in 45 C.F.R. § 160.103) to that third party or (ii) the Company provides protected health information (as defined in 45 C.F.R. § 160.103) to that third party, or that third party otherwise acts as a business associate to the Company, in each case as required by, and in conformity with, applicable Information Privacy and Security Laws and the applicable Contracts to which the Company is a party.

(ff) Employees of the Company who have access to Protected Information have received training with respect to compliance with all applicable Information Privacy and Security Laws and, to the extent applicable, the PCI DSS.

(gg) The Company has implemented and maintained a comprehensive and written privacy and security plan that (i) identifies internal and external risks to the privacy and security of the Confidential Information and Protected Information, (ii) implements, monitors and improves adequate and effective administrative, electronic and physical safeguards to control those risks, (iii) is commercially reasonable, and (iv) complies with applicable Information Privacy and Security Laws, including with respect to notification procedures that may be required in the case of any Security Breach. The Company has taken reasonable actions consistent with industry standards to protect the confidentiality, integrity and security of its Protected Information and its IT Assets against any unauthorized use, access, interruption, modification or corruption and in conformance with Information Privacy and Security Laws.

(hh) The Company has not experienced any Security Breach or otherwise unauthorized access by third parties to the Confidential Information or Protected Information in the Company's possession, custody or control, including any unauthorized access, use or disclosure of Protected Information that would constitute a breach for which notification to individuals and/or Governmental Entities is required under any applicable Information Privacy and Security Laws or Contracts to which the Company is a party.

(ii) The Company has performed a security assessment that meets (i) the standards set forth at 45 C.F.R. § 164.308(a)(1)(ii) (A), including an assessment as described at 45 C.F.R. § 164.306(d)(3), taking into account factors set forth in 45 C.F.R. § 164.306(a)–(c) and (ii) the Federal Risk and Authorization Management Program security control requirements (collectively, the "**Security Assessment**") and performed penetration testing (no less frequently than annually). The Company has performed vulnerability scans (no less frequently than quarterly) on each network owned or operated by the Company, including as required by the PCI DSS to the extent applicable. The Company has addressed and fully remediated all threats and deficiencies identified as "high" or "medium" risk (or equivalent) in any Security Assessment, penetration test and vulnerability scan.

2.11 Environmental Matters. (a) All Hazardous Materials and wastes of the Company and its Subsidiary have been disposed of in accordance in all material respects with all Environmental and Safety Laws, (b) neither the Company nor its Subsidiary has received any written notice of any noncompliance of the Facilities or its past or present operations with Environmental and Safety Laws, (c) no administrative actions or suits are pending or, to the Knowledge of the Company, threatened, relating to an actual or alleged violation of any applicable Environmental and Safety Laws by the Company or its Subsidiary, (d) neither the Company nor its Subsidiary is reasonably likely to be a determined to be a responsible party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any analogous state, local or foreign laws arising out of events occurring prior to the Closing Date, (e) to the Knowledge of the Company, there have not been in the past, and are not now, any Hazardous Materials on, under or migrating to or from any of the Facilities or any Property, (f) to the Knowledge of the Company, there have not been in the past, and are not now, any underground tanks or underground improvements at, on or under any Property, including treatment or storage tanks, sumps or water, gas or oil wells and (g) the Facilities and the Company's and its Subsidiary's uses and activities therein have at all times materially complied with all Environmental and Safety Laws.

2.12 Taxes.

For purposes of this Section 2.12 and the definition of Pre-Closing Taxes, all references to the Company shall include all Subsidiaries of the Company and any Person that merged with and into or liquidated into the Company (or any such Subsidiary).

(a) The Company has properly completed and timely filed all income and other material Tax Returns required to be filed by it (taking into account any extensions of the due date for filing) and have timely and fully paid all Taxes whether or not shown on any Tax Return. All such Tax Returns were true, correct and complete in all material respects and have been prepared in material compliance with all applicable Legal Requirements. The Company has made available to Acquirer true, correct and complete copies of all (i) Tax Returns (other than immaterial information Tax Returns, such as Forms W-2 and 1099) for all periods ending after December 31, 2012, (ii) examination reports and statements of deficiencies assessed against or agreed to by the Company, and (iii) all Tax studies or similar reports related to Sections 269, 382, 383, 384 or 1502 of the Code or any corresponding or similar provision of state, local or foreign Tax Legal Requirements, research and development Tax credits, or any other material study or report with respect to Tax matters.

(b) The Company Balance Sheet reflects all Liabilities for unpaid Taxes of the Company for periods (or portions of periods) through the Company Balance Sheet Date. The Company has no Liability for unpaid Taxes accruing after the Company Balance Sheet Date except for Taxes arising in the ordinary course of business consistent with past practice subsequent to the Company Balance Sheet Date. The Company has no Liability for Pre-Closing Taxes (including Taxes arising from the transactions contemplated by this Agreement) that is not included in the calculation of the Working Capital, Company Indebtedness, Company Transaction Expenses, or any other Taxes resulting in a reduction in the Total Merger Consideration.

(c) There is (i) no claim for Taxes being asserted against the Company that has resulted in a lien against the property of the Company other than liens for Taxes not yet due and payable, (ii) no audit or pending audit of, or Tax controversy associated with, any Tax Return of the Company being conducted by a Tax Authority, (iii) no extension of any statute of limitations on the assessment of any Taxes granted by the Company that is currently in effect, (iv) no agreement to any extension of time for filing any Tax Return that has not been filed (other than pursuant to extensions of time to file Tax Returns in the ordinary course of business or which has already lapsed), and (v) no proposed deficiencies or other written claims from any Tax Authority for unpaid Taxes of the Company that remains open and outstanding. No written claim has ever been made by any Governmental Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction.

(d) The Company does not have a permanent establishment or fixed place of business in any country other than its country of incorporation.

(e) The Company has not been nor will be required to include any adjustment in Taxable income for any Taxable period (or portion thereof) pursuant to Section 481 or 263A of the Code or any comparable provision under state, local or foreign Tax laws as a result of transactions, events or accounting methods employed prior to the Merger.

(f) The Company is not a party to or bound by any Tax sharing, Tax indemnity or Tax allocation agreement nor does the Company have any Liability or potential Liability to another party under any such agreement; *provided*, that, for purposes of this Section 2.12(f), commercial agreements entered into in the ordinary course of business, the primary purpose of which does not relate to Taxes, shall be disregarded. The Company does not have any contractual obligation to pay the amount of any Tax benefits or Tax refunds realized or received by it (or an amount in reference to any such Tax benefits or Tax refunds realized or received) to any former shareholder(s) or other Person(s). With respect to the assessment or payment of Tax, no special agreements, rulings or compromises have been entered into by the Company with any Tax Authority.

(g) The Company has not consummated or participated in, and is not currently participating in any transaction that was or is a “Tax shelter” transaction as defined in Sections 6662 or 6111 of the Code or the Treasury Regulations promulgated thereunder. The Company has not participated in, and it is not currently participating in, a “Listed Transaction” or a “Reportable Transaction” within the meaning of Section 6707A(c) of the Code or Treasury Regulation Section 1.6011-4(b) or any transaction requiring disclosure under a corresponding or similar provision of state, local or foreign Legal Requirements.

(h) Neither the Company nor any predecessor of the Company has ever been a member of a consolidated, combined, unitary or aggregate group of which the Company or any predecessor of the Company was not the ultimate parent corporation. The Company does not currently have, nor has ever had, any direct or indirect ownership interest in any corporation, partnership, joint venture or other entity.

(i) The Company does not have any Liability for the Taxes of any Person (other than the Company) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign law) as a transferee or successor, by Contract or otherwise by operation of Legal Requirements.

(j) The Company has disclosed in Schedule 2.12(j) of the Company Disclosure Schedule the amount of any deferred gain or loss arising out of any intercompany transaction within the meaning of Section 1.1502-13 of the Treasury Regulations.

(k) The Company will not be required to include in income, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting, or use of an improper method of accounting, for a Taxable period ending on or prior to the Closing Date, (ii) “closing agreement” described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax law) entered into on or prior to the Closing Date, (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Tax law), (iv) installment sale or open transaction disposition made on or prior to the Closing Date, (v) prepaid amount or deferred revenue received on or prior to the Closing Date or (vi) election under Section 108(i) of the Code.

(l) The Company has not incurred a dual consolidated loss within the meaning of Section 1503 of the Code.

(m) The Company has in its possession official foreign government receipts for any material Taxes paid by it to any foreign Tax Authorities.

(n) The Company has provided or made available to Acquirer all documentation relating to any applicable Tax holidays or incentives. The Company is in material compliance with the requirements for any applicable Tax holidays or incentives.

(o) The Company is not nor has it ever been a “United States real property holding corporation” within the meaning of Section 897 of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(p) The Company has not constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock qualifying for Tax-free treatment under Section 355 of the Code (i) in the two (2) years prior to the Agreement Date or (ii) in a distribution that could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in conjunction with the Merger.

(q) The Company has materially complied (and until the Closing will comply) with all applicable Legal Requirements relating to the payment, reporting and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1445 and 1446 of the Code or similar provisions under any state, local or foreign law), has, within the time and in the manner prescribed by law, withheld from employee wages or consulting compensation and paid over to the proper governmental authorities (or is properly holding for such timely payment) all amounts required to be so withheld and paid over under all applicable Legal Requirements, including federal and state income Taxes, Federal Insurance Contribution Act, Medicare, Federal Unemployment Tax Act, relevant state income and employment Tax withholding laws, and has timely filed all required withholding Tax Returns, for all periods through and including the Closing Date.

(r) The Company is not qualified to do business as a foreign corporation or otherwise in any other states or jurisdictions except Delaware and California.

2.13 Employee Benefit Plans and Employee Matters.

(a) Schedule 2.13(a) of the Company Disclosure Schedule lists as of the Agreement Date, with respect to the Company, and any trade or business (whether or not incorporated) that is treated as a single employer with the Company (an “*ERISA Affiliate*”) within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all “employee benefit plans” within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“*ERISA*”) (whether or not subject to ERISA), (ii) each loan to an employee, (iii) all stock option,

stock purchase, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Section 125 of the Code), dependent care (Section 129 of the Code), life insurance or accident insurance plans, programs or arrangements, (iv) all bonus, commission, pension, profit sharing, savings, severance, change of control, retirement, deferred compensation or incentive plans, programs or arrangements, (v) all other material fringe or employee benefit plans, programs or arrangements and (vi) all employment, executive compensation or other service provider agreements that, in each case, for the benefit of, or relating to, any present or former employee, consultant or non-employee director of the Company (each, an “*Employee*”) or under which the Company may incur any Liability (each of the foregoing described in clauses (i) through (vi), whether written or otherwise, a “*Company Employee Plan*” and collectively, the “*Company Employee Plans*”), and including any plan, program, policy, practice, or Contract that is sponsored by a professional employer organization or co-employer organization (each, a “*PEO*”) under which any Employee may be eligible to receive benefits in connection with the Company’s engagement of a PEO (each, a “*PEO Company Employee Plan*”).

(b) The Company has furnished or made available to Acquirer a true, correct and complete copy of each of the Company Employee Plans and related plan documents (including trust documents, insurance policies or Contracts, employee booklets, summary plan descriptions and other authorizing documents, and any material employee communications relating thereto, and a summary of any unwritten Company Employee Plan) and has, with respect to each Company Employee Plan that is subject to ERISA reporting requirements, except for any PEO Company Employee Plan, provided to Acquirer true, correct and complete copies of the Form 5500 reports filed for the last three (3) plan years.

(c) Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service a favorable determination letter (or advisory or opinion letter, as the case may be, as to its qualified status under the Code). The Company has provided or made available to Acquirer a true, correct and complete copy of such letter, and nothing has occurred since the issuance of each such letter that would reasonably be expected to cause the loss of the tax-qualified status of any Company Employee Plan subject to Section 401(a) of the Code (in the case of a PEO Company Employee Plan, to the Knowledge of the Company).

(d) The Company does not sponsor or maintain any self-funded employee welfare benefit plan. None of the Company Employee Plans promises or provides retiree medical or other post-termination welfare benefits to any Person other than (i) as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”) or similar state law or (ii) continued health coverage following a termination of employment for a period not to exceed eighteen (18) months.

(e) Each Company Employee Plan has been administered in all material respects in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code), and the Company, each ERISA Affiliate and each fiduciary has performed all material obligations required to be performed by it under, is not in default under or in violation of, and has no Knowledge of any default or violation by any fiduciary or other party to, any of the Company Employee Plans (in the case of a PEO Company Employee Plan, to the Knowledge of the Company).

(f) Neither the Company nor any ERISA Affiliate is subject to any Liability or penalty under Sections 4976 through 4980, or 4980A through 4980I, of the Code or Title I of ERISA with respect to any of the Company Employee Plans.

(g) All contributions required to be made by the Company, or any ERISA Affiliate to any Company Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Company Employee Plan for the current plan years.

(h) No suit, administrative proceeding, action or other litigation has been brought, or to the Knowledge of the Company, is threatened, against or with respect to any such Company Employee Plan, including any non-routine audit or inquiry by the Internal Revenue Service or United States Department of Labor (in the case of a PEO Company Employee Plan, to the Knowledge of the Company).

(i) No Company Employee Plan is covered by, and neither the Company nor any ERISA Affiliate has incurred or expects to incur any Liability under Title IV of ERISA or Section 412 of the Code. Neither the Company nor any current or former ERISA Affiliate currently maintains, sponsors, participates in, contributes to or is required to contribute to or has ever maintained, established, sponsored, participated in, contributed to or been required to contribute to, any pension plan (within the meaning of Section 3(2) of ERISA) that is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code, any “multiemployer plan” as such term is defined in Section 3(37) of ERISA or any “multiple employer plan” as such term is defined in Section 413(c) of the Code. No Company Employee Plan that is an “employee welfare benefit plan” under Section 3(2) of ERISA is (i) a “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA (other than a PEO Company Employee Plan) or (ii) a “voluntary employees’ beneficiary association” within the meaning of Section 501(c)(9) of the Code.

(j) None of the execution and delivery of this Agreement, the consummation of the Merger or any other transaction contemplated by this Agreement or any termination of employment or service or any other event in connection therewith or subsequent thereto will, individually or together or with the occurrence of some other event, (i) result in any payment (including severance, change of control payment, bonus or otherwise) becoming due to any Person, (ii) materially increase or otherwise enhance any benefits otherwise payable by the Company, (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits, (iv) increase the amount of compensation due to any Person, (v) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any Person or (vi) is reasonably expected to result in any amount failing to be deductible by reason of Section 280G of the Code. No stock of the Company or any Company Securityholder is readily tradeable on an established securities market or otherwise (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), such that the Company is ineligible to seek stockholder approval in a manner that complies with Section 280G(b)(5) of the Code.

(k) No Company Employee Plan is subject to any laws other than those of the United States or any state, county, or municipality in the United States.

(l) The Company and, to the Company’s Knowledge, with respect to any employees of the Company, any PEO is, and in the past five (5) years have been, in compliance in all material respects with all applicable Legal Requirements respecting labor and employment, including, but not limited to, discrimination in employment, terms and conditions of employment, worker classification (including the proper classification of workers as independent contractors and consultants and the proper classification of employees as exempt or non-exempt from the overtime requirements of the Fair Labor Standards Act), wages, hours, meal and rest periods, overtime, affirmative action, immigration, equal employment opportunity, retaliation, whistleblowers, employer Tax withholding, harassment, disability rights or benefits, applicant and employment background checking, occupational safety and health and employment practices, including the Immigration Reform and Control Act, and is not engaged in any unfair labor practice. The Company, and, to the Company’s Knowledge, with respect to any employees of the Company, any PEO have withheld all amounts required by law or by agreement to be withheld from the wages, salaries and other payments to employees, and are not liable for any arrears of wages, compensation, employer Taxes, penalties or other sums for failure to comply with any of the foregoing. The Company, and to the Company’s Knowledge, with respect to any employees of the Company any PEO have paid in full to all employees, independent

contractors and consultants all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees, independent contractors and consultants. Neither the Company nor, to the Company's Knowledge, with respect to any employees of the Company, any PEO are, or in the past five (5) years have been, liable for any payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business consistent with past practice). There are, and in the past five (5) years have been, no pending claims against the Company under any workers compensation plan or policy or for long term disability other than claims in the ordinary course. Neither the Company nor, to the Company's Knowledge, with respect to any employees of the Company, any PEO currently or in the past five (5) years have had any obligations under COBRA with respect to any former employees or qualifying beneficiaries thereunder, except for obligations that are not material in amount. There are, and in the past five (5) years have been, no controversies pending or, to the Knowledge of the Company, threatened, between the Company, or with respect to any employees of the Company, any PEO and any of their respective current or former employees, which controversies have or would reasonably be expected to result in an action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity.

(m) Schedule 2.13(m) of the Company Disclosure Schedule sets forth a true, correct and complete list as of the Agreement Date of all severance Contracts and employment Contracts which contain provisions relating to notice of prior termination or severance upon any type of cessation of services to which the Company is a party or by which the Company is bound. The Company does not have any obligation to pay any amount or provide any benefit to any former employee or officer, other than obligations (i) for which Company has established a reserve for such amount on the Company Balance Sheet and (ii) pursuant to Contracts entered into after the Company Balance Sheet Date and disclosed on Schedule 2.13(m) of the Company Disclosure Schedule. The Company is not, and has never been, a party to or bound by any collective bargaining agreement or other labor union Contract, no collective bargaining agreement or other labor union contract is being negotiated by the Company and the Company currently does not have, has never had, a duty to bargain with any labor organization. There is no pending or threatened demand for recognition or any other request or demand from a labor organization for representative status with respect to any Person employed by the Company. To the Knowledge of the Company, there has never been any activities or proceedings of any labor union or to organize its employees. There is no labor dispute, strike, or work stoppage against the Company pending or, to the Knowledge of the Company, threatened, and there has never been any such labor dispute, strike, or work stoppage against the Company. Neither the Company, with respect to any employees of the Company, nor to the Knowledge of the Company, the PEO has committed any unfair labor practice in connection with the operation of the respective businesses of the Company. There is no charge or complaint against the Company or, to the Knowledge of the Company, any PEO with respect to any employees of the Company by the National Labor Relations Board or any comparable Governmental Entity pending or to the Knowledge of the Company, threatened. Except as set forth on Schedule 2.13(m) of the Company Disclosure Schedule, as of the Agreement Date, no employee of the Company has been dismissed in the last twelve (12) month period. Except as set forth on Schedule 2.13(m) of the Company Disclosure Schedule, neither the Company nor its Subsidiary, has promised or agreed, whether orally or in writing, to provide tuition reimbursement or advances related to education in any manner (such reimbursement or advancement costs, "**Education Costs**"), to any employee of the Company or its Subsidiary, and as of the Closing, neither the Company nor its Subsidiary shall owe any amounts in respect of such Education Costs to any employee of the Company or its Subsidiary.

(n) To the Knowledge of the Company, no employee of the Company is in violation of any term of any employment agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company or any PEO because of the nature of the business conducted or presently proposed to be conducted by the Company or to the use of trade secrets or proprietary information of others. Except as set forth on Schedule 2.13(n) of the Company Disclosure Schedule, as of the Agreement Date, no employee of the Company has given written notice to the Company that such employee intends to terminate his or her employment with the Company nor does the Company otherwise have Knowledge that any that such employee intends to terminate his or her employment with the Company. The employment of each of the

employees of the Company is “at will,” and the Company, with respect to any employees of the Company, any PEO do not have any obligation to provide any particular form or period of notice prior to terminating the employment of any of their respective employees, except as set forth on Schedule 2.13(n) of the Company Disclosure Schedule. As of the Agreement Date, other than the Offer Packages and except as otherwise approved by or in coordination with Acquirer, (i) the Company has not entered into any Contract that obligates or purports to obligate Acquirer to make an offer of employment to any present or former employee or consultant of the Company and/or (ii) the Company has not promised or otherwise provided any assurances (contingent or otherwise) to any present or former employee or consultant of the Company of any terms or conditions of employment with Acquirer following the Effective Time.

(o) The Company has provided to Acquirer a true, correct and complete list as of the Agreement Date of all officers, directors, employees (including, for the avoidance of doubt, temporary employees), and contractors of the Company, showing each such individual’s: (i) name; (ii) position; (iii) annual remuneration; (iv) status as exempt or non-exempt, or as applicable, an independent contractor; (v), bonuses, incentive compensation, and material fringe benefits for the current fiscal year and the most recently completed fiscal year; (vi) city/country of employment; (vii) visa status; (viii) date of hire; (ix) manager’s name; (x) work location; and (xi) active or inactive status (including expected return date, if known). Except as set forth on Schedule 2.13(o) of the Company Disclosure Schedule, the Company does not engage, and has not in the last twenty-four (24) months engaged, any leased employees, temporary employees, or other service providers through any staffing, leasing or professional employer organization.

(p) Schedule 2.13(p) of the Company Disclosure Schedule sets forth a true, correct and complete list as of the Agreement Date of the current individual consultants, advisory board members, contingent workers and independent contractors of the Company.

(q) The Company has provided to Acquirer true, correct and complete copies of each of the following: (i) all forms of offer letters, (ii) all forms of employment agreements and severance agreements, (iii) all forms of services agreements and agreements with current advisory board members, contingent workers and independent contractors, (iv) all forms of confidentiality, non-competition or inventions agreements between current employees/consultants and the Company (and a true, correct and complete list of employees, consultants and/or others not subject thereto), (v) the most current management organization chart(s) as of the Agreement Date, (vi) all agreements and/or insurance policies providing for the indemnification of any officers or directors of the Company, and (vii) a schedule of bonus commitments, if any, made to employees of the Company.

(r) The Company is in compliance in all material respects with the Worker Adjustment Retraining Notification Act of 1988, as amended (“**WARN Act**”), or any similar state or local law. In the past three (3) years, (i) the Company has not effectuated a “plant closing” (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of its business, (ii) there has not occurred a “mass layoff” (as defined in the WARN Act) affecting any site of employment or facility of the Company and (iii) the Company has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state, local or foreign law or regulation. The Company has not caused any of its employees to suffer an “employment loss” (as defined in the WARN Act) during the 90-day period prior to the Agreement Date.

(s) The Company has delivered to Acquirer true, correct and complete copies of all election statements under Section 83(b) of the Code, together with evidence of timely filing of such election statements with the appropriate Internal Revenue Service Center (if available), in each case, to the extent such materials are within the Company’s possession, with respect to any unvested securities or other property issued by the Company or any ERISA Affiliate to any of their respective employees, non-employee directors, consultants and other service providers.

2.14 Interested Party Transactions. None of the officers and directors of the Company and its Subsidiary and, to the Knowledge of the Company, none of the employees or stockholders of the Company and its Subsidiary, nor any immediate family member of an officer, director, employee or stockholder of the Company and its Subsidiary (collectively, the “**Interested Parties**”), has any direct or indirect ownership, participation, royalty or other interest in, or is an officer, director, employee of or consultant or contractor for any firm, partnership, entity or corporation that competes with, or does business with, or has any contractual arrangement with, the Company or its Subsidiary (except with respect to any interest in less than five percent (5%) of the stock of any corporation whose stock is publicly traded). No Interested Party is a party to, or to the Knowledge of the Company, otherwise directly or indirectly interested in, any Contract to which the Company or its Subsidiary is a party, except for normal compensation, including equity compensation, for services as an officer, director or employee thereof. To the Knowledge of the Company, no Interested Party has any interest in any property, real or personal, tangible or intangible (including any Intellectual Property) that is used in, or that relates in any respect to, the business of the Company or its Subsidiary, except for the rights of stockholders under applicable Legal Requirements.

2.15 Insurance. Schedule 2.15 to the Company Disclosure Schedule sets forth (a) an accurate and complete list of all insurance policies maintained by the Company and its Subsidiary and (b) a list of all pending claims under all such insurance policies as of the Agreement Date. Each such insurance policy is in full force and effect and shall continue in full force and effect immediately following the consummation of the transactions contemplated hereby. Neither the Company nor its Subsidiary has been refused any insurance or had its coverage been limited by any insurance carrier.

2.16 Books and Records. The Company has provided to Acquirer true, correct and complete copies of (i) all documents identified on the Company Disclosure Schedule, (ii) the certificate of incorporation and bylaws or equivalent organizational or governing documents of the Company and its Subsidiary, each as currently in effect, (iii) the minute books containing records of all material proceedings, consents, actions and meetings of the boards of directors, committees of the boards of directors and the stockholders of each of the Company and its Subsidiary for the past three (3) years, (iv) the stock ledger, journal and other records reflecting all stock issuances and transfers and all stock option and warrant grants and agreements of the Company and its Subsidiary and (v) all Company Authorizations. The books, records and accounts of the Company have been maintained in accordance with reasonable business practices on a basis consistent with prior years and are the basis for the Financial Statements.

2.17 Transaction Fees. Neither the Company nor any Affiliate of the Company owes any fees or expenses of any investment banker, broker, finder or similar party in connection with the origin, negotiation or execution of this Agreement or in connection with the Merger or any other transaction contemplated by this Agreement.

2.18 Material Contracts.

(a) Except for this Agreement and the Contracts specifically identified in Schedule 2.18 of the Company Disclosure Schedule (with each of such Contracts specifically identified under subsection(s) of such Schedule 2.18 that correspond to the Subsection or Subsections of this Section 2.18(a) applicable to such Contract), as of the Agreement Date, neither the Company nor its Subsidiary is a party to and nor is bound by any of the following Contracts (each, a “**Material Contract**”):

(i) any distributor, original equipment manufacturer, reseller, value added reseller, sales, advertising, agency or manufacturer’s representative Contract;

(ii) any Contract (A) for the purchase, sale or license of materials, supplies, equipment, services, software, Intellectual Property or other assets by the Company involving in the case of any such Contract more than \$50,000 in the aggregate over the past two years, or where the Company is contractually obligated to spend more than \$50,000 in the next twelve (12) months; and (B) Contracts with the Company’s customers with a monthly recurring revenue as of September 30, 2018 to exceed \$50,000 in the next twelve (12) months;

(iii) any Contract that expires or may be renewed at the option of any Person other than the Company or its Subsidiary so as to expire more than one year after the Agreement Date and which Contract may not be terminated by the Company upon sixty (60) days or less notice;

(iv) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(v) any Contract for capital expenditures in excess of \$50,000 in the aggregate;

(vi) any Contract limiting the freedom of the Company or its Subsidiary to engage or participate, or compete with any other Person, in any line of business, market or geographic area, or to make use of any Company-Owned IP Rights, or any Contract granting most favored nation pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal, rights of first negotiation or similar rights and/or terms to any Person, or any Contract otherwise limiting the right of the Company or its Subsidiary to sell, distribute or manufacture any products or services or to purchase or otherwise obtain any software, components, parts, subassemblies or services;

(vii) any Contract pursuant to which the Company or its Subsidiary is a lessor or lessee of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property involving in excess of \$50,000 per annum;

(viii) any Contract of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the Liabilities or indebtedness of any other Person, other than non-exclusive end user licenses in connection with the sale of Company Products in the ordinary course of business consistent with past practice;

(ix) all licenses, sublicenses and other Contracts pursuant to which any Person is authorized to use any Company-Owned IP Rights, (other than non-exclusive end user licenses in connection with the sale of Company Products in the ordinary course of business consistent with past practice);

(x) other than “shrink wrap” and similar generally available commercial end-user licenses to software that is not redistributed with or used by the Company Products and that have an individual acquisition cost of \$50,000 or less, all licenses, sublicenses and other Contracts pursuant to which the Company or its Subsidiary acquired or is authorized to use any Third-Party Intellectual Property Rights;

(xi) any licenses, sublicenses and other Contracts pursuant to which the Company or its Subsidiary has agreed to any restriction on the right of the Company or its Subsidiary to use or enforce any Company-Owned IP Rights or pursuant to which the Company or its Subsidiary agrees to encumber, transfer or sell rights in or with respect to any Company-Owned IP Rights;

(xii) any Contract providing for the development of any software, content, technology or Intellectual Property, independently or jointly, by or for the Company or its Subsidiary;

(xiii) any Contract to license or authorize any third party to manufacture or reproduce any of the products, services, technology or Intellectual Property of the Company or its Subsidiary;

(xiv) any Contracts relating to the membership, participation or affiliation of or by the Company or its Subsidiary in or with, any industry standards group or association;

(xv) (A) any joint venture Contract, (B) any Contract that involves a sharing of revenues, profits, cash flows, expenses or losses with other Persons or (C) any Contract that involves the payment of royalties to any other Person;

(xvi) any agreement of indemnification or warranty or any Contract containing any support, maintenance or service obligation or cost on the part of the Company or its Subsidiary, other than non-exclusive end user licenses in connection with the sale of Company Products in the ordinary course of business consistent with past practice;

(xvii) (A) any Contract for the employment or engagement of any director, officer, employee, or consultant of the Company or any other type of Contract with any director, officer, employee, or consultant of the Company that is not immediately terminable by the Company at-will without notice, severance, cost or Liability and (B) any Contract requiring it to make a payment to any director, officer, employee, consultant, or other Person on account of the consummation of the Merger or any other transaction contemplated by this Agreement;

(xviii) any Contract or plan (including any stock option, merger and/or stock bonus plan) relating to the sale, issuance, grant, exercise, award, purchase, repurchase or redemption of any shares of Company Capital Stock or any other securities of the Company or its Subsidiary, or any options, warrants, convertible notes or other rights to purchase or otherwise acquire any such shares of stock, other securities or options, warrants or other rights therefor, in each case other than those that are on the Company's standard form equity award or exercise agreement (copies of which have been made available to Acquirer);

(xix) any Contract under which the Company or its Subsidiary provides any services, including advisory services, to any third party, including any consulting Contract, professional Contract or software implementation, deployment or development services Contract, or support services Contract;

(xx) any Contract with any labor union or any collective bargaining agreement or similar Contract;

(xxi) any Contract pursuant to which the Company has acquired a business or entity, or assets of a business or entity, whether by way of merger, consolidation, purchase of stock, purchase of assets, license or otherwise, or any Contract pursuant to which it has any material ownership interest in any other Person (other than its Subsidiary);

(xxii) any Contract with any Governmental Entity or any Company Authorization;

(xxiii) any settlement agreement;

(xxiv) any Contract pursuant to which rights of any third party are triggered or become exercisable in connection with or as a result of the execution of this Agreement or the consummation of the Merger or other transactions contemplated hereunder, either alone or in combination with any other event;

(xxv) any Contract with a Significant Customer or a Significant Supplier; or

(xxvi) any other oral or written Contract or obligation not listed in clauses (i) through (xxv) that individually had or has a value or payment obligation in excess of \$50,000 over the life of the Contract.

(b) All Material Contracts are in written form. The Company or its Subsidiary (as applicable) has performed all of the material obligations required to be performed by it and is entitled to all material benefits under, and is not alleged to be in default in respect of, any Material Contract. Each of the Material Contracts is in full force and effect, subject only to the effect, if any, of applicable bankruptcy and other similar laws affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies. As of the Agreement Date, and except for non-renewals or terminations occurring in the ordinary course of business, there exists no default or event of default or event, occurrence, condition or act, with respect to the Company or its Subsidiary, or to the Company's Knowledge, with respect to any other contracting party, that, with the giving of notice, the lapse of time or the happening of any other event or condition, would reasonably be expected to (i) become a default or event of default under any Material Contract or (ii) give any third party (A) the right to declare a default or exercise any remedy under any Material Contract, (B) the right to a rebate, chargeback, refund, credit, penalty or change in delivery schedule under any Material Contract, (C) the right to accelerate the maturity or performance of any obligation of the Company under any Material Contract or (D) the right to cancel, terminate or modify any Material Contract. As of the Agreement Date, neither the Company nor its Subsidiary has received any written (or the Knowledge of the Company, oral) communication regarding any actual or alleged violation or breach of, default under, or intention to cancel or modify any Material Contract. True, correct and complete copies of all Material Contracts have been provided to Acquirer prior to the Agreement Date.

2.19 Export Control Laws. Each of the Company and its Subsidiary has conducted its export transactions in accordance in all material respects with applicable provisions of United States export control laws and regulations, including (i) the Export Administration Regulations; (ii) economic sanctions regulations and Executive Orders administered by the U.S. Treasury Department's Office of Foreign Assets Control; (iii) the International Traffic in Arms Regulations; and (iv) all comparable Laws of each jurisdiction outside the U.S. in which the Company or its Subsidiary does or has done business (directly or indirectly). Without limiting the foregoing, (i) the Company and its Subsidiary have obtained all export licenses, registrations, commodity classifications and other approvals required for its exports of products, software and technologies and reexports of such items between third (3rd) countries; (ii) the Company and its Subsidiary are in compliance in all material respects with the terms of all applicable export licenses, license exceptions or other approvals; (iii) there are no pending or, to the Knowledge of the Company and its Subsidiary, threatened claims or investigations against the Company with respect to the Company's or its Subsidiary's export transactions; (iv) neither the Company nor its Subsidiary has engaged in any transactions involving, or otherwise dealt directly or indirectly with, any Restricted Parties or with Cuba, Iran, North Korea, Sudan, Syria or the Crimea region of Ukraine; (v) no current or past officer, director or employee of the Company or its Subsidiary is or has been a Restricted Party or national or resident of Cuba, Iran, North Korea, Sudan, Syria or the Crimea region of Ukraine; (vi) neither the Company nor its Subsidiary is nor was required to be registered with the U.S. Department of State under the International Traffic in Arms Regulations; and (vii) no consents or approvals for the transfer of export licenses to Acquirer are required, except for such consents and approvals that can be obtained expeditiously without material cost.

2.20 Customers and Suppliers.

(a) Neither the Company nor its Subsidiary has any outstanding material disputes concerning its products and/or services with any customer or distributor who is or was during the past two (2) fiscal years one of the ten (10) largest sources of monthly recurring revenues for the Company, based on amounts paid or payable (each, a "**Significant Customer**"), and, as of the Agreement Date, to the Knowledge of the Company, there is no material dissatisfaction on the part of any Significant Customer with respect to the Company Products. Each Significant Customer is listed on Schedule 2.20(c) of the Company Disclosure Schedule. As of the Agreement Date, neither the Company nor its Subsidiary has received any written notice from any Significant Customer that such customer shall not continue as a customer of the Company or its Subsidiary (or Acquirer or the Surviving Corporation) after the Closing or that such customer intends to terminate or materially modify existing Contracts with the Company or its Subsidiary (or Acquirer or the Surviving Corporation).

(b) Neither the Company nor its Subsidiary has any outstanding material dispute concerning products and/or services provided by any supplier who, is or was during the past two (2) fiscal years one of the ten (10) largest suppliers of products and/or services to the Company, based on amounts paid or payable (each, a “**Significant Supplier**”), and to the Knowledge of the Company, there is no material dissatisfaction on the part of any Significant Supplier with respect to the Company or its Subsidiary. Each Significant Supplier is listed on Schedule 2.20(b) of the Company Disclosure Schedule. As of the Agreement Date, neither the Company nor its Subsidiary has received any written notice from any Significant Supplier that such supplier shall not continue as a supplier to the Company or its Subsidiary (or Acquirer or the Surviving Corporation) after the Closing or that such supplier intends to terminate or materially modify existing Contracts with the Company or its Subsidiary (or Acquirer or the Surviving Corporation).

(c) The information set forth on Schedule 2.20(c) of the Company Disclosure Schedule is true, correct and complete in all respects as of the date set forth therein.

2.21 Accounts Receivable. The accounts receivable as reflected on the Company Balance Sheet arose in the ordinary course of business consistent with past practice and represented bona fide claims against debtors for sales and other charges. Allowances for doubtful accounts and warranty returns have been prepared in accordance with GAAP consistently applied and in accordance with the Company’s past practice. The accounts receivable of the Company and its Subsidiary arising after the Company Balance Sheet Date and before the Closing Date arose or shall arise in the ordinary course of business consistent with past practice and represented or shall represent bona fide claims against debtors for sales and other charges. None of the accounts receivable of the Company or its Subsidiary is subject to any claim of offset, recoupment, setoff or counter-claim. No material amount of accounts receivable is contingent upon the performance by the Company or its Subsidiary of any obligation or Contract other than normal warranty repair and replacement. No Person has any lien on any of such accounts receivable and no agreement for deduction or discount has been made with respect to any of such accounts receivable. Schedule 2.21 of the Company Disclosure Schedule sets forth as of September 30, 2018 an aging of the Company’s and its Subsidiary’s accounts receivable in the aggregate and by customer (on an anonymized basis) and indicates the amounts of allowances for doubtful accounts and warranty returns.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF ACQUIRER AND SUB

Acquirer represents and warrants to the Company as follows:

3.1 Organization and Standing. Each of Acquirer and Sub is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Neither Acquirer nor Sub is in violation of any of the provisions of its articles or certificate of incorporation, as applicable, or bylaws.

3.2 Authority; Noncontravention.

(a) Each of Acquirer and Sub has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of Acquirer and Sub. This Agreement has been duly executed and delivered by each of Acquirer and Sub and constitutes the valid and binding obligation of Acquirer and Sub enforceable against Acquirer and Sub, respectively, in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) The execution and delivery of this Agreement by Acquirer and Sub do not, and the consummation of the transactions contemplated by this Agreement will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of a benefit under (i) any provision of the articles or certificate of incorporation, as applicable, or bylaws of Acquirer or Sub, as amended to date, (ii) any Contract to which Acquirer or Sub is a party or (iii) applicable Legal Requirements, except where such conflict, violation, default, termination, cancellation or acceleration, individually or in the aggregate, would not be material to Acquirer's or Sub's ability to consummate the Merger or to perform their respective obligations under this Agreement.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, is required by or with respect to Acquirer or Sub in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement, except for the filing of the Certificate of Merger, as provided in Section 1.5.

3.3 No Prior Sub Operations. Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated by this Agreement.

3.1 No Additional Representations. Acquirer and Sub acknowledge that the Company has not made, and Acquirer and Sub are not relying on, any representations or warranties regarding the subject matter of this Agreement or the transactions contemplated hereby, express or implied, except as set forth in Article II or pursuant to certificates or ancillary agreements delivered hereto.

ARTICLE IV

CONDUCT PRIOR TO THE EFFECTIVE TIME

4.1 Conduct of Business of the Company. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Effective Time (the "**Pre-Closing Period**"), except with the prior written consent of Acquirer or except as set forth on Schedule 4.1 of the Company Disclosure Schedule:

(a) the Company and its Subsidiary shall use commercially reasonable efforts to conduct their business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted (except to the extent expressly provided otherwise in this Agreement) and in compliance with all applicable Legal Requirements;

(b) each of the Company and its Subsidiary shall (i) pay all of its debts and Taxes when due, subject to good faith disputes over such debts or Taxes (and with respect to Taxes, maintain adequate reserves consistent with GAAP, and the past practice and policies of the Company), (ii) pay or perform its other obligations in the ordinary course of business consistent with past practices, (iii) use commercially reasonable efforts consistent with past practice and policies to collect accounts receivable when due and not extend credit outside of the ordinary course of business consistent with past practice, (iv) sell Company products consistent with past practice as to license, service and maintenance terms, incentive programs, and in accordance with GAAP requirements as to revenue recognition, and (v) use its commercially reasonable efforts consistent with past practice and policies to preserve intact its present business organizations, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, to the end that its goodwill and ongoing businesses shall be unimpaired at the Closing;

(c) the Company shall use its commercially reasonable efforts to assure that each of its and its Subsidiary's Contracts (other than with Acquirer) entered into after the Agreement Date will not require the procurement of any consent, waiver or novation or provide for any change in the obligations of any party thereto in connection with, or terminate as a result of the consummation of, the Merger, and shall give reasonable advance notice to Acquirer prior to allowing any Material Contract or right thereunder to lapse or terminate by its terms; and

(d) the Company and its Subsidiary shall maintain each of its leased premises in accordance with the terms of the applicable lease.

4.2 Restrictions on Conduct of Business of the Company. Without limiting the generality or effect of the provisions of Section 4.1, during the Pre-Closing Period, the Company shall not, and shall cause its Subsidiary to not, cause or permit any of the following (except (x) as otherwise expressly permitted or required by the terms of this Agreement, (y) with the prior written consent of Acquirer (such consent not to be unreasonably withheld, conditioned or delayed with respect to clause (c) below), or (z) as set forth on Schedule 4.2 of the Company Disclosure Schedule):

(a) **Charter Documents.** Cause or permit any amendments to its certificate of incorporation or bylaws or equivalent organizational or governing documents;

(b) **Dividends; Changes in Capital Stock.** (i) Declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its capital stock, or (ii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock except from former employees, non-employee directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service, other than (A) the issuance of shares of Company Capital Stock pursuant to the exercise of Company Options that are either vested or otherwise permitted under the applicable option agreement, (B) the issuance of shares of Company Common Stock upon conversion of shares of Company Preferred Stock outstanding on the Agreement Date and (C) the repurchase of any shares of Company Capital Stock from former employees, non-employee directors and consultants in accordance with Contracts providing for the repurchase of shares in connection with any termination of service;

(c) **Material Contracts.** (i) Enter into any Contract that would constitute a Material Contract, other material Contract or a Contract requiring a novation or consent in connection with the Merger, (ii) violate, terminate, amend or otherwise materially modify (including by entering into a new Contract with such party or otherwise), except for renewals, non-renewals or terminations occurring in the ordinary course of business consistent with the terms of such Contract) or (iii) waive any of its rights under any of the Material Contracts; *provided* that this provision shall not require the Company to seek or obtain Acquirer's consent in order to set or change the prices at which the Company sells products or provides services to current customers in the ordinary course of business consistent with past practice;

(d) **Issuance of Securities.** Issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any Company Voting Debt or any shares of Company Capital Stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other Contracts of any character obligating it to issue, any such shares or other convertible securities, other than (i) the issuance of shares of Company Capital Stock pursuant to the exercise of Company Options that are either vested or otherwise permitted under the applicable option agreement, (ii) the issuance of shares of Company Common Stock upon conversion of shares of Company Preferred Stock outstanding on the Agreement Date and (iii) the repurchase of any shares of Company Capital Stock from former employees, non-employee directors and consultants in accordance with Contracts providing for the repurchase of shares in connection with any termination of service;

(e) Employees; Consultants; Independent Contractors. (i) Hire any additional officers or other employees, or engage any consultants or independent contractors, (ii) terminate the employment (other than for cause), change the title, office or position, or reduce or modify the responsibilities of any management, supervisory or other key personnel of the Company, (iii) enter into, amend, extend the term of, or terminate (other than for cause) any employment or consulting agreement with any officer, employee, consultant or independent contractor, or (iv) negotiate, enter into, adopt or amend or announce any intention to negotiate, enter into, adopt or amend any Contract with a labor union or collective bargaining agreement (unless required by applicable Legal Requirements);

(f) Loans and Investments. Make any loans or advances (other than routine expense advances to employees of the Company in the ordinary course of business consistent with past practice) to, or any investments in or capital contributions to, any Person, or forgive or discharge in whole or in part any outstanding loans or advances, or prepay any borrowed money indebtedness;

(g) Intellectual Property. Transfer or license from any Person any rights to any Intellectual Property (other than “shrink wrap” and similar generally available commercial end-user licenses to software that is not redistributed with the Company Products and that have an individual acquisition cost of \$10,000 or less), or transfer or license to any Person any rights to any Company-Owned IP Rights (other than non-exclusive end-user licenses in connection with the sale of Company Products in the ordinary course of business consistent with past practice), or transfer or provide a copy of any Company Source Code to any Person (including any current or former employee or consultant of the Company or any contractor or commercial partner of the Company) (other than providing access to Company Source Code to current employees and consultants of the Company involved in the development of the Company Products on a need-to-know basis, consistent with past practice).

(h) Exclusive Rights and Most Favored Party Provisions. Enter into or amend any Contract pursuant to which any other party is granted exclusive rights or “most favored party” rights of any type or scope with respect to any of its products, technology, Intellectual Property or business, or containing any non-competition covenants or other restrictions relating to its or its Affiliates’ business activities;

(i) Dispositions. Sell, lease, license or otherwise dispose of or encumber (other than Permitted Encumbrances) any of its properties or assets, other than sales and nonexclusive licenses of Company Products in the ordinary course of business consistent with its past practice or enter into any Contract with respect to the foregoing;

(j) Debt. Incur any borrowed money indebtedness, including, for the avoidance of doubt, any drawdowns or borrowings under existing facilities, or guarantee any such indebtedness or issue or sell any debt securities or guarantee any debt securities of others;

(k) Leases. Enter into any operating lease in excess of \$50,000 or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(l) Payment of Obligations. (i) Pay, discharge or satisfy (A) any amounts due under any promissory note to any Person who is an officer or director of the Company as of the Agreement Date or (B) any claim or Liability in excess of \$5,000 arising other than in the ordinary course of business consistent with past practice, other than the payment, discharge or satisfaction of Liabilities reflected or reserved against in the Financial Statements and Transaction Expenses, (ii) defer payment of any accounts payable other than (A) in the ordinary course of business consistent with past practice or (B) in an amount not to exceed \$10,000 or (iii) give any discount, accommodation or other concession other than in the ordinary course of business consistent with past practice in order to accelerate or induce the collection of any receivable;

(m) Capital Expenditures. Make any capital expenditures, capital additions or capital improvements in excess of \$50,000 per month or \$50,000 in the aggregate;

(n) Insurance. Materially change the amount of any insurance coverage;

(o) Termination or Waiver. Terminate or waive any right of substantial value;

(p) Employee Benefit Plans; Pay Increases. (i) Adopt, amend or terminate any Company Employee Plan or other employee or compensation benefit plan, including any stock issuance or stock option plan, or amend any compensation, benefit, entitlement, grant or award provided or made under any such plan, except in each case as required under ERISA, applicable Legal Requirements or as necessary to maintain the qualified status of such plan under the Code, (ii) materially amend any deferred compensation plan within the meaning of Section 409A of the Code, except to the extent necessary to meet the requirements of such Section, (iii) grant or pay any special bonus or special remuneration to any current or former employee or non-employee director or consultant, (iv) increase the salaries, wage rates or fees of its current employees or non-employee directors or consultants (other than pursuant to preexisting plans, policies or Contracts that have been disclosed to Acquirer and are set forth on Schedule 4.2(p) of the Company Disclosure Schedule), or (v) add any new members to the Company Board;

(q) Severance Arrangements. (i) Grant or pay, or enter into any Contract providing for the granting of any severance, change of control, retention or termination pay, to any Person or (ii) accelerate the payment timing, funding, or vesting of any compensation or other benefits, in each case other than payments or acceleration made pursuant to preexisting plans, policies or Contracts that have been disclosed to Acquirer and are set forth on Schedule 4.2(q) of the Company Disclosure Schedule);

(r) Lawsuits; Settlements. (i) Commence a lawsuit other than (A) for the routine collection of bills, (B) in such cases where it in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of its business (*provided* that it consults with Acquirer prior to the filing of such a suit) or (C) for a breach of this Agreement or (ii) settle or agree to settle any pending or threatened lawsuit or other dispute;

(s) Acquisitions. Acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets that are material, individually or in the aggregate, to its business, or enter into any Contract with respect to a joint venture, strategic alliance or partnership;

(t) Taxes. Make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any federal, state or foreign income Tax Return or any other material Tax Return without the review and reasonable approval of Acquirer, file any amendment to a federal, state or foreign income Tax Return or any other material Tax Return, enter into any Tax sharing or similar agreement or assume any liability for the Taxes of any other Person (whether by Contract or otherwise) or enter into any closing agreement with any Tax Authority, settle any claim or assessment in respect of Taxes (or refunds thereof), or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes without the prior review and reasonable approval of Acquirer, or enter into intercompany transactions giving rise to deferred gain or loss of any kind;

(u) Accounting. Change accounting methods or practices (including any change in depreciation or amortization policies) or revalue any of its assets (including writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business consistent with past practice), except in each case as required by changes in GAAP as concurred with its independent accountants and after notice to Acquirer;

(v) **Real Property.** Enter into any Contract for the purchase, sale or lease of any real property;

(w) **Encumbrances.** Place or allow the creation of any Encumbrance (other than a Permitted Encumbrance) on any of its properties;

(x) **Warranties, Discounts.** Materially change the manner in which it provides warranties, discounts or credits to customers;

(y) **Interested Party Transactions.** Enter into any Contract in which any officer, director, employee, agent or stockholder of the Company or its Subsidiary (or any member of their immediate families) has an interest under circumstances that, if entered immediately prior to the Agreement Date, would require that such Contract be listed on Schedule 2.18 of the Company Disclosure Schedule; and

(z) **UK Company Options.** Take any action that would reasonably be expected to result in the loss of qualified status of any UK Company Options as Enterprise Management Incentives (as defined in ITEPA).

(aa) **Other.** Take or agree in writing or otherwise to take, any of the actions described in clauses (a) through (z) in this Section 4.2.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Company Board Recommendation; Stockholder Approval and Notice.

(a) Neither the Company Board nor any committee thereof shall withhold, withdraw, amend or modify, or propose or resolve to withhold, withdraw, amend or modify in a manner adverse to Acquirer, the unanimous recommendation of the Company Board that the Company Stockholders vote in favor of the adoption of this Agreement and the approval of the Merger.

(b) Within seven (7) Business Days following the Agreement Date, the Company shall prepare, with the cooperation of Acquirer, and mail to each Company Stockholder other than the Company Stockholders who previously executed the Company Stockholder Consent, a notice (as it may be amended or supplemented from time to time, the “**Stockholder Notice**”) comprising (i) the notice contemplated by Section 228(e) of Delaware Law and Section 603(b) of California Law of the taking of a corporate action without a meeting by less than a unanimous written consent, (ii) the notice contemplated by Section 262(d)(2) of Delaware Law and Chapter 13 of California Law, together with a copy of Section 262 of Delaware Law and Chapter 13 of California Law and (iii) an information statement to the Company Stockholders in connection with solicitation of the Company Stockholder Approval. The Stockholder Notice shall include (x) a statement to the effect that the Company Board had unanimously recommended that the Company Stockholders vote in favor of the adoption of this Agreement and the approval of the Merger and (y) such other information as Acquirer and the Company may agree is required or advisable under Delaware Law and/or California Law to be included therein. Following the mailing of the Stockholder Notice, no amendment or supplement to the Stockholder Notice shall be made by the Company without the approval of Acquirer (which approval shall not be unreasonably withheld or delayed). Each of Acquirer and the Company agrees to provide promptly to the other such information concerning its business, financial statements and affairs as, in the reasonable judgment of Acquirer or its counsel, may be required or advisable to be included under Delaware Law and/or California Law in the Stockholder Notice or in any amendment or supplement thereto, and Acquirer and the Company agree to cause their respective Representatives to cooperate in the preparation of the Stockholder Notice and any amendment or supplement thereto.

(c) Prior to the Effective Time, the Company shall notify the Company Securityholders (other than the Company Stockholders so notified pursuant to Section 5.1(b)) of the Merger, to the extent required by the terms and conditions of this Agreement, the Charter Documents, any Legal Requirements, or any agreement or instruments governing the securities of the Company (other than the Company Capital Stock)

(d) The Company shall use its commercially reasonable efforts to obtain prior to the Closing a Joinder Agreement executed by each Company Stockholder.

5.2 No Solicitation.

(a) During the Pre-Closing Period, the Company shall not authorize or permit any of its officers, directors, Affiliates, stockholders or employees or any investment banker, attorney or other advisor or representative retained by any of them (all of the foregoing collectively being the “**Company Representatives**”) to, directly or indirectly, (i) solicit, initiate, seek, entertain, knowingly encourage or facilitate, support or induce the making, submission or announcement of any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (ii) enter into, participate in, maintain or continue any communications (except solely to provide written notice as to the existence of these provisions) or negotiations regarding, or deliver or make available to any Person any non-public information with respect to, or take any other action regarding, any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (iii) agree to, accept, approve, endorse or recommend (or publicly propose or announce any intention or desire to agree to, accept, approve, endorse or recommend) any Acquisition Proposal, (iv) enter into any letter of intent or any other Contract contemplating or otherwise relating to any Acquisition Proposal or (v) submit any Acquisition Proposal to the vote of any stockholders of the Company. The Company shall immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Persons conducted prior to or on the Agreement Date with respect to any Acquisition Proposal. If any Company Representative, in his or her capacity as such, takes any action that the Company is obligated pursuant to this Section 5.2 to cause such Company Representative not to take, then the Company shall be deemed for all purposes of this Agreement to have breached this Section 5.2.

(b) The Company shall promptly notify Acquirer in writing within 24 hours after receipt by the Company (or, to the Knowledge of the Company, by any of the Company Representatives), of (i) any Acquisition Proposal, (ii) any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (iii) any other written notice that any Person is considering making an Acquisition Proposal or (iv) any request for nonpublic information relating to the Company or for access to any of the properties, books or records of the Company by any Person or Persons other than Acquirer. Such notice shall describe (A) the material terms and conditions of such Acquisition Proposal, inquiry, expression of interest, proposal, offer, notice or request and (B) the identity of the Person or Group making any such Acquisition Proposal, inquiry, expression of interest, proposal, offer, notice or request. The Company shall keep Acquirer fully informed of the status and details of, and any modification to, any such inquiry, expression of interest, proposal or offer and any correspondence or communications related thereto and shall provide to Acquirer a true, correct and complete copy of such inquiry, expression of interest, proposal or offer and any amendments, correspondence and communications related thereto, if it is in writing, or a reasonable written summary thereof, if it is not in writing. The Company shall provide Acquirer with 48 hours prior notice (or such lesser prior notice as is provided to the members of the Company Board) of any meeting of the Company Board at which the Company Board is reasonably expected to discuss any Acquisition Proposal.

5.3 Confidentiality; Public Disclosure.

(a) The parties hereto acknowledge that Acquirer and the Company have previously executed a Nondisclosure Agreement dated October 5, 2016, as amended by Amendment No. 1 dated March 20, 2017 and Amendment No. 2 dated September 15, 2018 (as amended, the “*Confidentiality Agreement*”), which shall continue in full force and effect in accordance with its terms.

(b) The Company shall not, and the Company shall direct each Company Representative not to, directly or indirectly, issue any press release or other public statement relating to the terms of this Agreement or the transactions contemplated by this Agreement or use Acquirer’s name or refer to Acquirer directly or indirectly in connection with Acquirer’s relationship with the Company in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of Acquirer, unless and only to the extent (i) required by law (in which event a satisfactory opinion of counsel to that effect shall be first delivered to Acquirer prior to any such disclosure), (ii) as reasonably necessary for the Company to obtain the consents and approvals of Company Stockholders and other third parties contemplated by this Agreement, (iii) as reasonably necessary to enforce such party’s rights under this Agreement, the Escrow Agreement or any other agreement entered into in connection with this Agreement, (iv) such information is or becomes generally known to the public without violation of this Agreement, the Confidentiality Agreement or any other agreement or obligations restricting the disclosure of such information by such party and (v) made by a Company Stockholder that is a venture capital or private equity fund in communications to its investors as may be (A) legally or contractually required or (B) reasonably necessary in the good faith exercise of the fiduciary duties of the general part of such Company Stockholder. Notwithstanding anything herein or in the Confidentiality Agreement, Acquirer may issue such press releases or make such other public statements regarding this Agreement or the transactions contemplated by this Agreement as Acquirer may, in its reasonable discretion, determine.

5.4 Regulatory Approvals. During the Pre-Closing Period:

(a) The Company shall promptly execute and file, or join in the execution and filing of, any application, notification (including any notification or provision of information, if any, that may be required under applicable foreign antitrust laws) or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental Entity, whether federal, state, local or foreign, that may be reasonably required, or that Acquirer may reasonably request, in connection with the consummation of the Merger and the other transactions contemplated by this Agreement. The Company shall use commercially reasonable efforts to obtain, and to cooperate with Acquirer to promptly obtain, all such authorizations, approvals and consents and shall pay any associated filing fees payable by the Company with respect to such authorizations, approvals and consents. The Company shall promptly inform Acquirer of any material communication between the Company and any Governmental Entity regarding any of the transactions contemplated by this Agreement. If the Company or any Affiliate of the Company receives any formal or informal request for supplemental information or documentary material from any Governmental Entity with respect to the transactions contemplated by this Agreement, then the Company shall make, or cause to be made, as soon as reasonably practicable, a response in compliance with such request. The Company shall direct, in its sole discretion, the making of such response, but shall consider in good faith the views of Acquirer.

(b) Acquirer shall promptly execute and file, or join in the execution and filing of, any application, notification (including any notification or provision of information, if any, that may be required under applicable foreign antitrust laws) or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental Entity, whether foreign, federal, state, local or municipal, that may be reasonably required in connection with the consummation of the Merger and the other transactions contemplated by this Agreement. Acquirer shall use commercially reasonable efforts to obtain all such authorizations, approvals and consents and shall pay any associated filing fees payable by Acquirer with respect to such authorizations, approvals and consents. Acquirer shall promptly inform the Company of any material communication between Acquirer and

any Governmental Entity regarding any of the transactions contemplated by this Agreement. If Acquirer or any Affiliate of Acquirer receives any formal or informal request for supplemental information or documentary material from any Governmental Entity with respect to the transactions contemplated by this Agreement, then Acquirer shall make, or cause to be made, as soon as reasonably practicable, a response in compliance with such request. Acquirer shall direct, in its sole discretion, the making of such response, but shall consider in good faith the views of the Company.

5.5 Reasonable Efforts. Subject to the limitations set forth in Section 5.4, each of the parties hereto (other than the Stockholders' Agent) agrees to use its commercially reasonable efforts with respect to its contractual obligations, and to cooperate with each other party hereto, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, appropriate or desirable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement, including the satisfaction of the respective conditions set forth in Article VI, and including to execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the Merger and the other transactions contemplated by this Agreement.

5.6 Third Party Consents; Notices.

(a) During the Pre-Closing Period, the Company shall use commercially reasonable efforts to obtain prior to the Closing, and deliver to Acquirer at or prior to the Closing, all consents, waivers and approvals under each Contract listed or described on Schedule C, the form of which consents, waivers and approvals shall be subject to the prior approval of Acquirer; provided, however, that the Company shall not be obligated to make any payment or commercial concession to any third party, or incur any Liability, as a condition to (or in connection with) obtaining any such consent, waiver or approval.

(b) The Company shall give all notices and other information required to be given to the employees of the Company, any collective bargaining unit representing any group of employees of the Company, and any applicable government authority under the WARN Act, the National Labor Relations Act, as amended, the Code, COBRA, the American Recovery and Reinvestment Act of 2009 and other applicable Legal Requirements in connection with the transactions contemplated by this Agreement.

5.7 Litigation. During the Pre-Closing Period, the Company will, to the extent legally permitted, (i) notify Acquirer in writing promptly after learning of any action, suit, arbitration, mediation, proceeding, claim or investigation by or before any Governmental Entity, arbitrator, mediator, or other body initiated by or against it, or, to the Knowledge of the Company, threatened against the Company or any of its directors, officers, employees or stockholders in their capacity as such (a "**New Litigation Claim**"), (ii) notify Acquirer of ongoing material developments in any New Litigation Claim and (iii) consult in good faith with Acquirer regarding the conduct of the defense of any New Litigation Claim.

5.8 Access to Information.

(a) During the Pre-Closing Period, (i) the Company shall afford Acquirer and its accountants, counsel and other representatives, reasonable access during business hours to (A) all of the Company's properties, books, Contracts and records and (B) all other information concerning the business, properties and personnel of the Company as Acquirer may reasonably request and (ii) to the extent reasonably requested by Acquirer in writing, the Company shall provide or make available to Acquirer and its accountants, counsel and other representatives true, correct and complete copies of the Company's (A) internal financial statements, (B) Tax Returns, Tax elections and all other records and workpapers relating to Taxes, (C) a schedule of any deferred intercompany gain or loss with respect to transactions to which the Company has been a party and (D) receipts for any Taxes paid to foreign Tax Authorities; *provided, however*, that (i) such access does not unreasonably interfere with the normal operations of the Company, (ii) such access shall occur in such a manner as the Company reasonably determines to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement, (iii) all requests for access shall

be directed to the individuals set forth on Section 2 of Schedule G attached hereto or such other Person as the Company may designate in writing from time to time, (iv) nothing herein shall require the Company to provide access to, or to disclose any information to, Acquirer or any of its representatives if such access or disclosure, in the good faith reasonable belief of the Company, (x) would waive any legal privilege or (y) would be in violation of Legal Requirements or regulations of any Governmental Entity or the provisions of any agreement to which the Company is a party as of the Agreement Date.

(b) Subject to compliance with applicable Legal Requirements and provisos (i) through (iv) of Section 5.8(a), during the Pre-Closing Period, the Company shall confer from time to time as requested by Acquirer with one or more representatives of Acquirer to discuss any material changes or developments in the operational matters of the Company and the general status of the ongoing operations of the Company.

(c) No information or knowledge obtained by Acquirer during the pendency of the transactions contemplated by this Agreement in any investigation pursuant to this Section 5.8 shall affect or be deemed to modify any representation, warranty, covenant, condition or obligation under this Agreement, in each case except to the extent set forth in the Company Disclosure Schedule.

5.9 Closing Spreadsheet. The Company shall prepare and deliver to Acquirer and the Paying Agent, no later than three (3) Business Days prior to the Closing, a spreadsheet (the “*Closing Spreadsheet*”), in a form reasonably acceptable to Acquirer and the Paying Agent, which spreadsheet shall be dated as of the Closing Date and shall set forth all of the following information (in addition to the other required data and information specified therein), as of the Closing Date and immediately prior to the Effective Time:

(a) the names of all the Company Securityholders and their respective addresses and, where available, email addresses;

(b) the number and kind of shares of Company Capital Stock held by, or subject to the Company Options held by, such Persons and, in the case of outstanding shares, the respective certificate numbers;

(c) the exercise price per share in effect for each Company Option;

(d) the vesting status and schedule with respect to Company Options and Company Capital Stock (if any) and terms of the Company’s rights to repurchase such Company Capital Stock (including the repurchase price payable per share);

(e) the calculation of Total Merger Consideration, Total Adjusted Merger Consideration, Founder Holdback Amount, Escrow Fund, Expense Fund, Per Share Amount, Closing Per Share Amount (with respect to each Effective Time Holder), Escrow Per Share Amount, Expense Fund Per Share Amount and Founder Holdback Per Share Amount;

(f) with respect to each Effective Time Holder, the aggregate amount of cash payable to such Effective Time Holder pursuant to Sections 1.10(a)(i), 1.10(a)(ii) and 1.10(a)(iii);

(g) with respect to each Company Optionholder, the aggregate Vested Company Option Cash Out Amount payable to such holder with respect to all Vested Company Options held by such Company Optionholder pursuant to Section 1.10(a)(iv);

(h) the Pro Rata Share of each Effective Time Holder in the Escrow Fund and the Expense Fund;

(i) the wire transfer instructions with respect to payments by the Acquirer pursuant to Sections 1.10(a)(i), 1.10(a)(ii), 1.10(b)(i), and 1.10(c);

(j) the Persons to whom Estimated Company Indebtedness (with respect to indebtedness for borrowed money) and Estimated Company Transaction Expenses is owed and, in each case, their respective payoff amounts and wire transfer instructions; and

(k) a separate column indicating whether each Company Securityholder will be paid by the Paying Agent or through Company payroll.

5.10 Expenses. Whether or not the Merger is consummated, except as otherwise set forth herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement (including transaction expenses) shall be paid by the party incurring such expense.

5.11 Employees and Benefit Matters.

(a) Unless Acquirer provides written notice to the Company to the contrary at least five (5) days prior to the Closing Date, each of the Company and any ERISA Affiliate shall terminate or, in the case of any PEO Company Employee Plan, shall terminate its participation in, any and all Company Employee Plans, including any plans intended to meet the requirements of Code Section 125 or Code Section 401(a), and shall cause any professional employer organization or co-employer organization to terminate the participation of each Employee in any PEO Company Employee Plan maintained by such organization, effective as of the times described in this Section 5.11, below. Unless Acquirer provides written notice to the Company as contemplated in the foregoing sentence, prior to the Closing Date, the Company shall provide Acquirer with evidence that the Company Employee Plans, or, in the case of any PEO Company Employee Plans, the Company's participation in the PEO Company Employee Plans, have been terminated pursuant to resolutions of the Board of Directors of the Company, such ERISA Affiliate or such other organization, as the case may be. The form and substance of such resolutions, and the manner in which the Company's participation in any PEO Company Employee Plan is terminated, shall be subject to review and approval of Acquirer. The Company also shall take such other actions in furtherance of the foregoing as Acquirer may reasonably require. In the event that the termination of the Company's participation in any PEO Company Employee Plan that is a 401(k) Plan would reasonably be anticipated to trigger liquidation charges, surrender charges or other fees, then such charges or fees shall be included in the Final Company Transaction Expenses of the Company and shall be the responsibility of the Company, and the Company shall take such actions as are necessary to reasonably estimate the amount of such charges or fees and provide such estimate in writing to Acquirer prior to the Closing Date.

(b) Except with respect to the processing of the Vested Company Option Cash Out Amount through the PEO payroll services, the Company shall terminate all Contracts with any professional employer organizations, or other agreements or arrangements providing for co-employment of Employees of the Company on or prior to the Closing, including sending all required notices, such that (a) each such Contract, agreement or arrangement shall be of no further force or effect immediately prior to the Closing, in each case without any remaining Liability of any kind on the part of the Company, Acquirer or any of its affiliates, (b) immediately prior to the Closing Date, the Employees shall be considered solely employees of the Company for all purposes, (c) each Employee's participation in any Company Employee Plans sponsored by a professional employer organization or co-employer shall terminate as of the Closing Date to the extent permitted under the terms of such Company Employee Plan.

5.12 Treatment of Company Options and Related Matters.

(a) Prior to the Effective Time, the Company shall take all action that may be necessary or required (under any Company Equity Plan, any applicable Legal Requirement, the applicable stock option award agreements or otherwise) to effectuate the provisions of Sections 1.9(a)(iv) and 1.9(a)(v), to ensure that, from and after the Effective Time, each Company Optionholder shall have no rights with respect to its respective Vested Company Options or Unvested Company Options, except the right to receive the consideration, if any, specified Sections 1.9(a)(iv) and 1.9(a)(v), as applicable.

(b) The Company shall use its commercially reasonable efforts to ensure that there shall be no outstanding securities, commitments or agreements of the Company immediately prior to the Effective Time that purport to obligate the Company or its Subsidiary to issue any shares of Company Capital Stock, Company Options or other securities under any circumstances

(c) The Company shall use its commercially reasonable efforts to cause the delivery to Acquirer at or prior to the Closing of a true, correct and complete copy of each election statement under Section 83(b) of the Code filed by each Person who acquired unvested shares of Company Capital Stock after the Agreement Date (or prior to the Agreement Date to the extent not previously provided or made available by the Company), together with evidence of timely filing of such election statement with the appropriate Internal Revenue Service Center.

(d) As soon as practicable following the Agreement Date and in any event prior to the Effective Time, the Company shall provide notice to all holders of Company Options, of the treatment of such Company Options pursuant to this Agreement. The Company shall provide to Acquirer as promptly as practicable copies of all correspondence in accordance with the foregoing sentence and shall provide Acquirer with the advance opportunity to review and comment upon all such documentation prior to its dissemination in accordance with this Section 5.12(d).

5.13 Parachute Payment Waivers. The Company shall obtain and deliver to Acquirer, prior to the initiation of the requisite stockholder approval procedure under Section 5.14, a Parachute Payment Waiver from each Person who the Company reasonably believes is, with respect to the Company, a “disqualified individual” (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), as determined immediately prior to the initiation of the requisite stockholder approval procedure under Section 5.14, and who might otherwise have, receive or have the right or entitlement to receive a parachute payment under Section 280G of the Code as a result of the Merger.

5.14 Section 280G Stockholder Approval. Promptly following the execution of this Agreement and no later than three (3) Business Days prior to the Closing Date, the Company shall submit to the holders of Company Capital Stock for approval (in a manner satisfactory to Acquirer), by such number of holders of Company Capital Stock as is required by the terms of Section 280G(b)(5)(B) of the Code, any payments or benefits that may separately or in the aggregate, constitute “parachute payments” pursuant to Section 280G of the Code (“**Section 280G Payments**”) (which determination, together with the disclosure to holders of Company Capital Stock in connection therewith, shall be made by the Company in consultation with Acquirer), such that such payments and benefits shall not be deemed to be Section 280G Payments, and prior to the Closing, the Company shall deliver to Acquirer notification and evidence reasonably satisfactory to Acquirer that (a) a vote of the holders of Company Capital Stock was solicited in conformance with Section 280G and the regulations promulgated thereunder and the requisite stockholder approval was obtained with respect to any payments or benefits that were subject to the stockholder vote (the “**280G Stockholder Approval**”), or (b) that the 280G Stockholder Approval was not obtained and as a consequence, that such payments or benefits shall not be made or provided to the extent they would cause any amounts to constitute Section 280G Payments, pursuant to the waivers of those payments or benefits, which were executed by the affected individuals prior to the vote of the holders of Company Capital Stock pursuant to this Section 5.14.

5.15 Closing Spreadsheet and Documents. The Company shall prepare and deliver to Acquirer a draft of the Closing Spreadsheet not later than five (5) Business Days prior to the Closing Date. The Company shall cause such documents to be derived from and be in accordance with the books and records of the Company. Without limiting the generality or effect of the provisions of Section 5.9, Company shall provide to Acquirer, promptly after Acquirer's request, copies of the documents or instruments evidencing the amounts set forth on the Closing Spreadsheet. The Company shall consider in good faith any reasonable comments to such draft Closing Spreadsheet made by Acquirer to be reflected in the final versions thereof delivered at Closing (it being understood that any such comments, or lack thereof, whether or not reflected in the final versions thereof shall not diminish or otherwise affect Acquirer's remedies hereunder if such final versions are not accurate).

5.16 Corporate Matters. The Company shall, prior to the Closing, deliver to Acquirer a completed annual franchise tax report (or similar applicable form, report or document), which report shall be true, correct and complete in all respects, for its jurisdiction of incorporation with respect to the current year setting forth the amount of Taxes and fees that shall have accrued as of the Closing and, if due and payable, pay all corporate franchise, foreign corporation and similar Taxes that shall have accrued as of the Closing (all such Taxes that have accrued but are not yet due and payable as of the Closing shall be included as Liabilities for Taxes as of the Closing Date in the calculation of Working Capital).

5.17 Taxes.

(a) [intentionally omitted]

(b) Cooperation and Pre-Closing Tax Period Tax Returns.

(i) The Acquirer, Surviving Corporation and the Stockholders' Agent shall cooperate fully as and to the extent reasonably requested by any of the others in connection with the filing of Tax Returns pursuant to this Section 5.17 and any Tax Proceeding with respect to Taxes. Such cooperation shall include the retention and, upon reasonable request to the extent such records or information are in the possession of such Person, the provision of records and information which are reasonably relevant to any such Tax Return, audit, litigation or other Tax Proceeding and making Persons available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Acquirer, the Company, and the Stockholders' Agent (to the extent in its possession) agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations of the respective taxable periods, and to abide by all record retention agreements entered into with any Tax Authority to the extent Acquirer, the Company and the Stockholders' Agent have been timely informed of such record retention agreements.

(ii) The Effective Time Holders shall bear (in accordance with Article VIII) the cost and economic burden of any Taxes and costs associated with Tax compliance, including, but not limited to the cost (to the extent incurred following the Effective Time, such cost not to exceed the amount set forth on Section 3 of Schedule G, reduced by any amounts expressly included in Working Capital) of preparing and filing Tax Returns, imposed on or payable by the Company that are attributable to a Pre-Closing Tax Period (reduced by any Taxes expressly included in Working Capital or that have otherwise been taken into account in the calculation of the Total Merger Consideration). Acquirer shall prepare or cause to be prepared and timely file all Tax Returns for any Taxable period ending on or prior to the Closing Date that is due after the Closing Date. The Company shall prepare and file or cause to be prepared and filed any Tax Returns required to be filed on or prior to the Closing Date. Tax Returns described in this Section 5.17(b)(ii) shall be prepared in accordance with past practices and customs of the Company (unless otherwise required by any applicable Legal Requirement). With respect to Tax Returns described in this Section 5.17(b)(ii) for which Acquirer shall be responsible for the preparation and filing thereof, and without limiting the foregoing and notwithstanding anything to the contrary in this Agreement, the following amounts shall be included as Liabilities for Taxes as of the Closing Date in the calculation of Working Capital: (i) a good faith estimate of all

Taxes that have accrued but are not yet due and payable as of the Closing Date and (ii) reasonable estimate of the costs and expenses consistent with past practices of the Company with respect to the preparation and filing of Tax Returns, including fees for Tax Return preparation.

(c) Straddle Period Tax Returns. Acquirer shall prepare or cause to be prepared all Tax Returns of the Company for any Taxable period of the Company that begins on or before the Closing Date and ends after the Closing Date (“**Straddle Period**”). Whenever it is necessary to determine the liability for Taxes of the Company for a Straddle Period, the determination of the Taxes of the Company for the portion of the Straddle Period included in a Pre-Closing Tax Period shall be determined: (i) by assuming in the case of Taxes that are either based upon or related to income or receipts or imposed in connection with any sale of property or in connection with payroll payments, that the Straddle Period consisted of two (2) taxable years or periods, one which ended at the close of the Closing Date and the other which began at the beginning of the day following the Closing Date, and items of income, gain, deduction, loss or credit of the Company for the Straddle Period shall be allocated between such two (2) taxable years or periods on a “closing of the books basis” by assuming that the books of the Company were closed at the close of the Closing Date; *provided, however*, that exemptions, allowances, deductions or Taxes that are calculated on an annual basis, such as property Taxes and depreciation deductions, shall be apportioned between such two (2) taxable years or periods on a daily basis; *provided, further*, that all items of loss or expense deductible by the Company as a result of the transactions contemplated hereby, including deductions related to Company Transaction Expenses shall be allocated to the Pre-Closing Tax Period to the extent permitted by applicable law; and (ii) in the case of all other Taxes of the Company, by taking the amount of such Taxes for the entire Straddle Period and multiplying such amount by a fraction, the numerator of which is the number of calendar days in the portion of the period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire period. Notwithstanding anything to the contrary in this Agreement, the Effective Time Holders shall, in accordance with Article VIII, cause to be released to Acquirer from the Escrow Fund (or pay to the Acquirer, as the case may be) the portion of the amount of Taxes shown as due on such Tax Returns for any Pre-Closing Tax Period, as reasonably determined by Acquirer (reduced by any Taxes expressly included in Working Capital or that have been otherwise taken into account in the calculation of the Total Merger Consideration) at least ten (10) days prior to the date such Taxes are required by law to be paid to the applicable Governmental Entity and the Company shall timely pay all amounts shown on the Straddle Period Tax Returns to the applicable Governmental Entity.

(d) Review and Consent. With respect to Tax Returns described in Section 5.17(b)(ii)(ii) for which Acquirer shall be responsible for the preparation and filing thereof, no later than thirty (30) days prior to the due date for filing any such Tax Returns (including extensions thereof) Acquirer will provide completed copies of such Tax Returns to the Stockholders’ Agent for review and comment. Acquirer shall reasonably and in good faith consider any such comments prior to the filing of such Tax Returns.

(e) Tax Controversies. Following the Closing Date, with respect to any audit, litigation or other proceeding with respect to Taxes (each a “**Tax Claim**”) involving Tax matters or items that could reasonably be expected to form the basis for a claim of indemnification against the Effective Time Holders pursuant to this Agreement, Acquirer will control such Tax Claim, including the defense and settlement thereof; *provided* that Stockholders’ Agent shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Effective Time Holders; *provided, further*, that Acquirer (x) will keep the Stockholders’ Agent reasonably informed concerning the progress of such Tax Claim, (y) provide the Stockholders’ Agent copies of all correspondence and other documents relevant to such Tax Claim, and (z) Stockholders’ Agent shall have the right to review such proposed compromise, settlement, consent or agreement. For the avoidance of doubt, this Section 5.17(e) and not Section 8.8 shall govern all Tax Claims.

(f) Transfer Taxes. The Effective Time Holders shall be responsible for Transfer Taxes that may be imposed upon, or payable or collectible or incurred in connection with, this Agreement and the transactions contemplated hereby. The parties hereto shall cooperate in connection with the filing by Person(s) required to do so by applicable law of all necessary Tax Returns and other documentation with respect to all Taxes referred to in this Section 5.17(f). Each of the Effective Time Holders and Acquirer shall use commercially reasonable efforts to minimize any Transfer Taxes that may be imposed upon, or payable or collectible or incurred in connection with, this Agreement and the transactions contemplated hereby.

(g) Tax Positions and Elections. Acquirer, the Company and their Affiliates will not, with respect to any Pre-Closing Tax Period, (i) file any amended Tax Return with respect to the Company or its Subsidiary or (ii) make or change any Tax election that has retroactive effect to any Tax Return for a Pre-Closing Tax Period, in each case, except (1) as required by Legal Requirement, (2) as permitted by Section 5.17(b), or (3) if such action would have no effect on the liability of the Effective Time Holders hereunder. Acquirer, the Company and their Affiliates will not file any elections under Section 338 of the Code with respect to the acquisition of the Company pursuant to this Agreement unless such election would have no effect on the liability of the Effective Time Holders hereunder.

(h) Limitation on Indemnification. Notwithstanding anything to the contrary contained in this Agreement, the Indemnifying Persons shall not have any liability or indemnification obligation for any Taxes of the Company or its Subsidiary (i) resulting from any action taken on or after the Closing Date by Acquirer or any of its Affiliates, including the Company and its Subsidiary; (ii) attributable to or arising from a breach by an Indemnified Person of its obligations, covenants or agreements under this Agreement or an Indemnified Party taking a tax position or filing a Tax Return inconsistent with the Company's past practice, or (iii) that are incurred in a Post-Closing Tax Period (and, for the avoidance of doubt, are not directly arising from a Pre-Closing Tax Period) except to the extent attributable to a breach of Sections 2.12(j), 2.12(k), or 2.12(p).

5.18 Indemnification of Officers and Directors.

(a) Prior to the Closing, the Company shall purchase an extended reporting period endorsement (the "**D&O Insurance**") under the Company's existing directors' and officers' liability insurance coverage for the Company's directors and officers on terms reasonably acceptable to Acquirer that shall provide such directors and officers with coverage for six (6) years following the Effective Time and that provides at least the same coverage in scope and amount as the existing coverage and have other terms not materially less favorable in the aggregate to the insured persons than the directors' and officers' liability insurance coverage presently maintained by the Company. The cost of any D&O Insurance shall be considered a Company Transaction Expense for purposes of this Agreement.

(b) From and after the Effective Time, and until the sixth (6th) anniversary of the Effective Time, Acquirer shall cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company to Persons who on or prior to the Effective Time are or were directors and/or officers of the Company (the "**D&O Indemnified Parties**") pursuant to any indemnification provisions under the company's charter and other organizational documents and pursuant to any indemnification agreements between the Company and such D&O Indemnified Parties that are listed on Schedule 5.18 of the Company Disclosure Schedule; *provided, however*, that (i) the foregoing obligations shall be subject to any limitation imposed by applicable Laws, and (ii) no D&O Indemnified Party shall have any right of contribution, indemnification or right of advancement from Acquirer, the Surviving Corporation, or their respective successors with respect to any Indemnifiable Damages that such D&O Indemnified Party is responsible for in his, her or its capacity as an Effective Time Holder pursuant to Article VIII of this Agreement.

(c) This Section 5.18 shall survive the consummation of the Merger and the Effective Time, is intended to benefit and may be enforced by the Company, Acquirer, the Surviving Corporation and the D&O Indemnified Parties, and shall be binding on all successors and assigns of Acquirer and the Surviving Corporation.

5.1 Continuing Employee Matters.

(a) For a period of twelve (12) months immediately after the Closing Date, Acquirer shall, or shall cause its Affiliates with which any employees of the Company who continue to be employed by the Surviving Corporation (collectively, the “*Continuing Employees*”) to, provide to such each such Continuing Employee (i) a base salary or wage rate no less favorable than the base salary or wage rate provided to such Continuing Employee immediately prior to the Effective Time; and (ii) employee welfare benefits (excluding any equity-based or equity-related compensation and any benefits provided pursuant to any defined benefit plan (if any)) that are, taken as a whole, no less favorable in the aggregate to those generally made available to similarly situated employees of the Acquirer under its welfare benefit plans and programs.

(b) With respect to any employee benefit plan maintained by Acquirer or its Affiliates in which any Continuing Employees participate after the Closing Date, Acquirer shall, and shall cause the its Affiliates to, make commercially reasonable efforts to credit all service of the Continuing Employees with the Company or its Subsidiary prior to the Effective Time, including for purposes of eligibility to participate, vesting, and determining seniority or the level of benefit in any such plan (other than any defined benefit plan, bonus plans, retiree medical plans and any grandfathered or frozen plans), to the extent that such service recognized under a similar Employee Plan; *provided, however*, that no such service shall be credited to the extent such service crediting would result in a duplication of benefits with respect to the same period of service. Acquirer shall, and shall cause its Affiliates to, make commercially reasonable efforts to waive participation waiting periods, and limitations on benefits related to any pre-existing conditions of the Continuing Employees and their eligible spouses and dependents for purposes of participation in any health plans sponsored by Acquirer or its Affiliates in which such Continuing Employees become eligible to participate following the Closing Date. Acquirer shall, and shall cause its Affiliates to, make commercially reasonable efforts to recognize for purposes of annual deductible and out-of-pocket limits under their health plans applicable to Continuing Employees following the Closing Date, deductible and out-of-pocket expenses paid by Continuing Employees and their respective spouses and dependents under Employee Plans that are health plans in the calendar year in which the Closing Date occurs, to the extent that such expense was recognized under the Employee Plan in which the Continuing Employee participated immediately prior the Effective Time.

(c) Nothing contained herein, express or implied: (i) is intended to confer upon any Continuing Employee any right to continued employment for any period or modify such Continuing Employee’s at-will employment status; (ii) shall guarantee receipt of any specific employee benefit or constitute an amendment to or any other modification of any benefit plan; (iii) shall alter or limit Acquirer, the Surviving Corporation, or their Affiliates’ ability to amend, modify or terminate any particular benefit plan, program, agreement or arrangement or (iv) is intended to confer upon any individual (including employees, retirees or dependents or beneficiaries of employees or retirees) any right as a third party beneficiary of this Agreement.

5.2 Education Costs. The Company shall seek an acknowledgement and waiver, in a form reasonably acceptable to Acquirer from the individual set forth on section 4 of Schedule G with respect to Education Costs.

ARTICLE VI

CONDITIONS TO THE MERGER

6.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party hereto to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions:

(a) Company Stockholder Approval. The Merger shall have been duly and validly approved and this Agreement shall have been duly and validly adopted, as required by Delaware Law and, to the extent applicable, California Law, and any applicable Legal Requirements and the Company's certificate of incorporation and bylaws, each as in effect on the date of such approval and adoption, by the requisite written consent of the Company Stockholders.

(b) Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger shall be in effect, nor shall any action have been taken by any Governmental Entity seeking any of the foregoing and no statute, rule, regulation or order shall have been enacted, entered, enforced or deemed applicable to the Merger, that makes the consummation of the Merger illegal.

(c) Governmental Approvals. Acquirer, Sub and the Company shall have timely obtained from each Governmental Entity all approvals, waivers and consents, if any, necessary for consummation of, or in connection with, the Merger and the other transactions contemplated by this Agreement.

6.2 Additional Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (it being understood that each such condition is solely for the benefit of the Company and may be waived by the Company in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. (i) Other than the Acquirer Fundamental Representations, the representations and warranties of the Acquirer and Sub in this Agreement shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality, which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such date (except for representations and warranties that address matters only as to a specified date, which representations and warranties shall be true and correct with respect to such specified date) and (ii) the Acquirer Fundamental Representations shall true and correct in all respects on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such date (except for representations and warranties that address matters only as to a specified date, which representations and warranties shall be true and correct with respect to such specified date). Acquirer and Sub shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it at or prior to the Closing.

(b) Receipt of Closing Deliveries. The Company shall have received each of the agreements, instruments and other documents set forth in Section 1.4(a).

6.3 Additional Conditions to the Obligations of Acquirer. The obligations of Acquirer to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (it being understood that each such condition is solely for the benefit of Acquirer and may be waived by Acquirer in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. (i) Other than the Company Fundamental Representations, the representations and warranties of the Company in this Agreement shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality, which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such date (except for representations and warranties that address matters only as to a specified date, which representations and warranties shall be true and correct with respect to such specified date) and (ii) the Company Fundamental Representations shall be true and correct in all respects on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such date (except for representations and warranties that address matters only as to a specified date, which representations and warranties shall be true and correct with respect to such specified date). The Company shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by the Company at or prior to the Closing.

(b) Receipt of Closing Deliveries. Acquirer shall have received each of the agreements, instruments and other documents set forth in Section 1.4(b); *provided* that such receipt shall not be deemed to be an agreement by Acquirer that the amounts set forth on the Closing Spreadsheet or any of the other agreements, instruments or documents set forth in Section 1.4(b) is accurate and shall not diminish Acquirer's remedies hereunder if any of the foregoing documents is not accurate.

(c) Injunctions or Restraints on Conduct of Business. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint provision limiting or restricting Acquirer's ownership, conduct or operation of the business of the Company, following the Closing shall be in effect. Nor shall there be pending or threatened in writing any suit, action or proceeding by any Governmental Entity seeking any of the foregoing.

(d) No Material Adverse Effect. Following the Agreement Date, there shall not have occurred a Material Adverse Effect with respect to the Company that is continuing.

(e) Offer Packages, Restrictive Covenant Agreements and Founder Holdback Agreements; Employees.

(i) Each of the Offer Packages, Restrictive Covenant Agreements and Founder Holdback Agreements executed concurrently with this Agreement shall be in full force and effect and shall not have been revoked, rescinded, or otherwise repudiated by the respective signatories thereto (other than Acquirer).

(ii) At least seventy percent (70%) of the Company's and its Subsidiary's employees employed as of the Agreement Date and who have received an offer of employment from Acquirer (excluding for the purposes of such calculation, the individuals set forth on Section 5 of Schedule G attached hereto) shall have executed new offer letters with Acquirer on Acquirer's standard form of offer letter, together with Acquirer's customary proprietary inventions assignment agreement.

(f) Section 280G Stockholder Approval. Any Contracts, plans or arrangements that may result, separately or in the aggregate, in the payment of any amount or the provision of any benefit that would reasonably be expected to be characterized as a "parachute payment" within the meaning of Section 280G of the Code shall have been submitted for approval by such number of Company Stockholders as is required by the terms of Section 280G in order for such payments and benefits not to be deemed parachute payments under Section 280G of the Code, with such approval to be obtained in a manner that satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the Treasury Regulations promulgated thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations, or, in the absence of such stockholder approval, none of those payments or benefits shall be paid or provided, pursuant to the Parachute Payment Waivers.

(g) Dissenting Shares. No more than three percent (3%) of the outstanding shares of Company Capital Stock shall have become Dissenting Shares.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

7.1 Termination. At any time prior to the Closing, this Agreement may be terminated and the Merger and other transactions contemplated by this Agreement abandoned by authorized action taken by the terminating party, whether before or after the Company Stockholder Approval:

(a) by mutual written consent of Acquirer and the Company;

(b) by either Acquirer or the Company, if the Closing shall not have occurred on or before December 8, 2018 or such other date that Acquirer and the Company may agree upon in writing (the "**Termination Date**"); *provided* that the right to terminate this Agreement under this Section 7.1(b) shall not be available to any party hereto whose breach of this Agreement has resulted in the failure of the Closing to occur on or before the Termination Date;

(c) by either Acquirer or the Company, if any permanent injunction or other order of a Governmental Entity of competent authority preventing the consummation of the Merger shall have become final and non-appealable;

(d) by Acquirer, if the Company shall have breached any representation, warranty, covenant or agreement contained herein and such breach shall not have been cured within fifteen (15) Business Days after receipt by the Company of written notice of such breach (*provided*, that no such cure period shall be available or applicable to any such breach that by its nature cannot be cured) and if not cured within the timeframe above and at or prior to the Closing, such breach would result in the failure of any of the conditions set forth in Section 6.1 or Section 6.3 to be satisfied; or

(e) by the Company, if Acquirer shall have breached any representation, warranty, covenant or agreement contained herein and such breach shall not have been cured within fifteen (15) Business Days after receipt by Acquirer of written notice of such breach (*provided* that no such cure period shall be available or applicable to any such breach that by its nature cannot be cured) and if not cured within the timeframe above and at or prior to the Closing, such breach would result in the failure of any of the conditions set forth in Section 6.1 or Section 6.2 to be satisfied.

7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Acquirer, Sub, the Company or their respective officers, directors, stockholders or Affiliates; *provided* that (i) the provisions of Section 5.3 (Confidentiality; Public Disclosure), Section 5.10 (Expenses), this Section 7.2 (Effect of Termination), Section 8.7(b) (Stockholders' Agent), Article IX (General Provisions) and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement and (ii) nothing herein shall relieve any party hereto from liability in connection with any willful and material breach of such party's representations, warranties or covenants contained herein.

7.3 Amendment. Subject to the provisions of applicable Legal Requirements, the parties hereto may amend this Agreement by authorized action at any time before or after the Company Stockholder Approval pursuant to an instrument in writing signed on behalf of each of the parties hereto (*provided* that after such approval, no amendment shall be made that by law requires further approval by such stockholders without such further stockholder approval). To the extent permitted by applicable Legal Requirements, Acquirer and the Stockholders' Agent may cause this Agreement to be amended at any time after the Closing by execution of an instrument in writing signed on behalf of Acquirer and the Stockholders' Agent.

ARTICLE VIII

INDEMNIFICATION

8.1 Survival of Representations and Warranties and Covenants. If the Merger is consummated, the representations and warranties of the Company contained in this Agreement (as modified by the Company Disclosure Schedule) and the other certificates contemplated by this Agreement shall survive the Closing and remain in full force and effect, regardless of any investigation made by or on behalf of any of the parties hereto, until 11:59 pm (Pacific Time) on the date that is eighteen (18) months following the Closing Date; *provided* that the Company Fundamental Representations (as modified by the applicable Company Disclosure Schedule) and the provisions of any certificate delivered to Acquirer regarding the Company Fundamental Representations pursuant to this Agreement will remain operative and in full force and effect, regardless of any investigation made by or on behalf of or knowledge obtained by any of the parties hereto (except as and to the extent set forth in the Company Disclosure Letter), until the expiration of the Fundamental Claims Period; *provided, further*, that no right to indemnification pursuant to this Article VIII in respect of any claim that is set forth in an Officer's Certificate delivered to the Stockholders' Agent and the Escrow Agent prior to the expiration of the Escrow Period in accordance with the terms hereof shall be affected by the expiration of the representation and warranty subject to such claim ; *provided, further*, that such expiration shall not affect the rights of any Indemnified Person under this Article VIII or otherwise to seek recovery of Indemnifiable Damages arising out of any actual and intentional fraud by the Company, which shall continue until and expire at 11:59 pm (Pacific Time) on the thirtieth (30th) day following the expiration of the applicable statute of limitations for the subject matter of such claim. If the Merger is consummated, the representations and warranties of Acquirer contained in this Agreement and the other certificates contemplated by this Agreement shall expire and be of no further force or effect as of the Closing. If the Merger is consummated, all covenants of the parties hereto (including the covenants set forth in Article IV and Article V) shall survive in accordance with their respective terms until the date on which such covenant is fully performed.

8.2 Indemnification. Subject to the limitations set forth in this Article VIII, from and after Closing, the Effective Time Holders shall, severally and not jointly, based on their Pro Rata Share, indemnify, defend and hold harmless Acquirer and its officers, directors, agents and employees, and each Person, if any, who controls or may control Acquirer within the meaning of the Securities Act (each of the foregoing being referred to individually as an "**Indemnified Person**" and collectively as "**Indemnified Persons**") from and against any and all losses, liabilities, damages, fees, reasonable out-of-pocket costs and expenses, including reasonable costs of investigation and costs of defense and, subject to the limitations set forth herein, settlement and reasonable fees and expenses of lawyers, experts and other professionals (collectively, "**Indemnifiable Damages**") directly or indirectly, whether or not due to a third-party claim, arising out of or resulting from:

(a) any failure of any representation or warranty made by the Company in this Agreement (as modified by the Company Disclosure Schedule) to be true and correct as of the Agreement Date and as of the Closing Date as though such representation or warranty were made as of the Closing Date (except in the case of representations and warranties that by their terms speak only as of a specific date or dates, which representations and warranties shall be true and correct as of such date);

(b) any failure of any certification, representation or warranty made by the Company in any certificate delivered to Acquirer pursuant to any provision of this Agreement to be true and correct as of the date such certificate is delivered to Acquirer;

(c) any breach of or default in connection with any of the covenants or agreements made by the Company in this Agreement (as modified by the Company Disclosure Schedule);

(d) any inaccuracies or errors in the Closing Spreadsheet;

(e) any Indemnifiable Company Indebtedness or Indemnifiable Company Transaction Expenses;

(f) any amount of Pre-Closing Taxes not already taken into account as a liability for purposes of determining the Working Capital, Company Indebtedness or Company Transaction Expenses;

(g) any payments paid with respect to Dissenting Shares (including reasonable fees, costs and expenses incurred in connection with investigating, defending against or settling any action or proceeding in respect of any Dissenting Shares) to the extent that such payments, in the aggregate, exceed the value of the amounts that otherwise would have been payable pursuant to Section 1.9(a) upon the exchange of such Dissenting Shares;

(h) actual and intentional fraud by the Company; and

(i) subsections (i) and (ii) of the definition of Employee Costs, solely to the extent unpaid following the Closing.

8.3 Indemnifiable Damage Threshold; Limitations; Other.

(a) Other than claims for indemnification that are made pursuant to Sections 8.2(a) and 8.2(b) with respect to a Company Fundamental Representation (a “**Fundamental Rep Claim**”), notwithstanding anything contained herein to the contrary, no Indemnified Person may make a claim in respect of any claim for indemnification that is made pursuant to Sections 8.2(a) or 8.2(b) unless and until an Officer’s Certificate describing Indemnifiable Damages in an aggregate amount greater than \$200,000 (the “**Threshold**”) has been delivered to the Stockholders’ Agent, in which case the Indemnified Person may make claims for indemnification for all Indemnifiable Damages (including the amount of the Threshold).

(b) If the Merger is consummated, recovery from the Escrow Fund shall be the sole and exclusive monetary remedy for the indemnity obligations under this Agreement for claims made with respect to Sections 8.2(a) or 8.2(b), except for Fundamental Rep Claims. With respect to Fundamental Rep Claims and claims for indemnification made pursuant to Section 8.2(c) through Section 8.2(i)(collectively, “**Fundamental Claims**”), after Indemnified Persons have exhausted all amounts of Escrow Cash in the Escrow Fund (after taking into account all other claims for indemnification from the Escrow Fund made by Indemnified Persons), each Effective Time Holder shall be liable for such holder’s Pro Rata Share of the amount of any Indemnifiable Damages resulting therefrom; *provided* that such liability of each Effective Time Holder pursuant to this Agreement shall be limited to the amount of Total Adjusted Merger Consideration actually received by such Effective Time Holder, other than in the case of actual and intentional fraud committed by such Effective Time Holder, in which case no such limit shall apply

(c) The Indemnified Persons shall first seek recovery of Indemnifiable Damages from the Escrow Funds; *provided, however*, subject to the limitations set forth in Section 8.3(b) regarding each Effective Time Holder’s liability for claims being limited to the amounts set forth therein, to the extent that an Indemnified Person recovers amounts from the Escrow Fund in satisfaction of a Fundamental Claim, such recovered amounts shall not reduce the amount that such Indemnified Person may recover with respect to claims for which recovery is limited to the Escrow Fund.

(d) Materiality standards or qualifications in any representation, warranty or covenant shall not be taken into account in determining the amount of any Indemnifiable Damages, but (for the sake of clarity) shall be taken into account in determining whether a breach, default or failure to be true and correct of, a representation and warranty or covenant has occurred.

(e) No Indemnified Person shall be entitled to indemnification (i) for a matter or circumstance under Section 8.2 or Section 8.8 to the extent that such Indemnified Person has already received indemnification for the same matter or circumstance pursuant to another provision of Section 8.2 or Section 8.8 or (ii) for any express component of the Company Indebtedness or the Company Transaction Expenses to the extent the same has been taken into account in determining the Total Merger Consideration.

(f) The representations and warranties (as modified in the Company Disclosure Schedule), covenants and obligations of the Company, and the rights and remedies that may be exercised by the Indemnified Persons, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or knowledge of, whether acquired or conducted before or after the Closing Date, Acquirer or any of the Indemnified Parties, or any of their Representatives.

(g) The amount of any Indemnifiable Damages that are subject to indemnification under this Article VIII shall be calculated net of the amount of any insurance proceeds, indemnification payments or reimbursements actually received by the Indemnified Persons from third parties (other than the Indemnifying Persons) in respect of such Indemnifiable Damages (net of any costs or expenses incurred in obtaining such insurance, indemnification or reimbursement, including any increases in insurance premiums or retro-premium adjustments resulting from such recovery but excluding expenses related to the D&O Insurance); *provided*, that nothing in this Section 8.3(f) shall be construed as or give rise to an obligation to seek any such insurance, indemnification or reimbursement. In the event that an insurance recovery is made by the Indemnified Persons with respect to any Indemnifiable Damages for which any such Indemnified Persons have been indemnified hereunder, then a refund equal to the aggregate amount of the recovery (net of all collection costs and expenses incurred in obtaining such insurance recovery, including any increases in insurance premiums or retro-premium adjustments resulting from such recovery) shall be made promptly to the Indemnifying Persons in accordance with their respective Pro Rata Share.

8.4 Claims Period. Except as set forth in this Section 8.4, the period during which claims for Indemnifiable Damages may be made (the “*Claims Period*”) for Indemnifiable Damages arising out of claims made pursuant to Sections 8.2(a) and 8.2(b) (other than with respect to Fundamental Rep Claims) shall commence at the Closing and terminate at 11:59 pm (Pacific Time) on the day that is eighteen (18) months following the Closing Date (the “*Escrow Period*”). The Claims Period for Indemnifiable Damages arising out of, resulting from or in connection with any Fundamental Claim shall commence at the Closing and terminate at 11:59 pm (Pacific Time) on the expiration of the applicable statute of limitations for the subject matter of such claim (the applicable time period specified in this proviso being the “*Fundamental Claims Period*”). Notwithstanding anything to the contrary, there shall be no Claims Period for Indemnifiable Damages arising out of any actual and intentional fraud by the Company, which shall continue until and expire at 11:59 pm (Pacific Time) on the thirtieth (30th) day following the expiration of the applicable statute of limitations for the subject matter of such claim.

8.5 Claims.

(a) If Acquirer becomes aware of any matter prior to the last day of the Escrow Period or Fundamental Claims Period, as applicable, that may give rise to Indemnifiable Damages for which an Indemnified Person may seek indemnification hereunder, Acquirer shall deliver to the Stockholders’ Agent a certificate signed by any officer of Acquirer (an “*Officer’s Certificate*”), (i) stating an Indemnified Person has incurred, paid, reserved or accrued, or reasonably anticipates that it may incur, pay, reserve or accrue Indemnifiable Damages (or that with respect to any Tax matters, that any Tax Authority may raise such matter in an audit of Acquirer or its subsidiaries

that could give rise to Indemnifiable Damages); (ii) stating amount of such Indemnifiable Damages (which, in the case of Indemnifiable Damages not yet incurred, paid, reserved or accrued, may be the maximum amount reasonably anticipated by Acquirer to be incurred, paid, reserved, accrued or demanded by a third party); and (iii) specifying in reasonable detail (based upon the information then possessed by Acquirer) the individual items of such Indemnifiable Damages included in the amount so stated and the nature of the claim to which such Indemnifiable Damages are related. Following the delivery of an Officer's Certificate, Acquirer shall provide reasonable access to Stockholder's Agent and its representatives to the books and records of the Surviving Corporation and reasonable access during normal business hours to such personnel or other representatives of the Surviving Corporation and Acquirer, in each case as may reasonably be required by Stockholders' Agent and its representatives, for the purposes of investigating or resolving any disputes relating to or raised by the Officer's Certificate

(b) The Officer's Certificate (i) need only specify such information to the knowledge of such officer of Acquirer as of the date thereof, (ii) shall not limit any of the rights or remedies of any Indemnified Person with respect to the underlying facts and circumstances specifically set forth in such Officer's Certificate, and (iii) may be updated and amended from time to time by Acquirer by delivering an updated or amended Officer's Certificate, so long as the delivery of the original Officer's Certificate is made within the applicable Claims Period and such update or amendment directly relates to the underlying facts and circumstances specifically set forth in such original Officer's Certificate; *provided, further*, that all claims for Indemnifiable Damages properly set forth in the original Officer's Certificate or any update or amendment thereto shall remain outstanding until such claims have been resolved or satisfied, notwithstanding the expiration of such Claims Period. No delay in providing such Officer's Certificate (or any update or amendment thereto after conducting discovery regarding the underlying facts and circumstances set forth therein) within the applicable Claims Period shall affect an Indemnified Person's rights hereunder, unless (and then only to the extent that) the Stockholders' Agent or the Effective Time Holders are materially prejudiced thereby in terms of the amount of Indemnifiable Damages the Effective Time Holders are obligated to indemnify the Indemnified Persons for.

(c) At the time of delivery of any Officer's Certificate to the Escrow Agent, a duplicate copy of such Officer's Certificate shall be delivered to the Stockholders' Agent by or on behalf of Acquirer (on behalf of itself or any other Indemnified Person) and for a period of 30 days after such delivery to the Escrow Agent of such Officer's Certificate, the Escrow Agent shall make no payment pursuant to this Section 8.5 unless the Escrow Agent shall have received written authorization from the Stockholders' Agent to make such delivery. After the expiration of such 30-day period, the Escrow Agent shall make delivery of cash from the Escrow Fund to Acquirer in accordance with this Section 8.5; *provided* that no such delivery may be made if and to the extent the Stockholders' Agent has objected in a written statement to any claim or claims made in the Officer's Certificate, and such written statement shall have been delivered to the Escrow Agent and to Acquirer prior to the expiration of such 30-day period.

8.6 Resolution of Objections to Claims.

(a) If the Stockholders' Agent objects in writing to any claim or claims by Acquirer made in any Officer's Certificate within such 30-day period, Acquirer and the Stockholders' Agent for 45 days after Acquirer's receipt of such written objection to resolve such objection. If Acquirer and the Stockholders' Agent shall so agree, a memorandum setting forth such agreement shall be prepared and signed by Acquirer and the Stockholders' Agent and delivered to the Escrow Agent. The Escrow Agent shall be entitled to conclusively rely on any such memorandum and the Escrow Agent shall distribute cash from the Escrow Fund in accordance with the terms of such memorandum and this Agreement.

(b) If no such agreement can be reached during the 45-day period for good faith negotiation, but in any event upon the expiration of such 45-day period, either Acquirer or Stockholders' Agent may bring suit to resolve the objection in accordance with Section 9.9 and 9.11. The decision of the trial court as to the validity and amount of any claim in such Officer Certificate shall be non-appealable, binding and conclusive upon the Acquirer or Stockholders' Agent. As applicable, if such decision calls for a payment to the Indemnified Persons and any funds remain in the Escrow Fund, Acquirer may, in its sole and absolute discretion, direct the Escrow Agent to act in accordance with such decision and distribute cash from the Escrow Fund in accordance therewith, or as otherwise required pursuant to the Escrow Agreement.

8.7 Stockholders' Agent.

(a) At the Closing, Shareholder Representative Services LLC shall be constituted and appointed as the Stockholders' Agent. For purposes of this Agreement, the term "**Stockholders' Agent**" means the exclusive representative, agent and attorney-in-fact for and on behalf of the Effective Time Holders for all purposes in connection with this Agreement and the agreements ancillary hereto, including to (i) give and receive notices and communications to or from Acquirer (on behalf of itself or any other Indemnified Person) relating to this Agreement, the Escrow Agreement or any of the transactions and other matters contemplated by this Agreement (except to the extent that this Agreement expressly contemplates that any such notice or communication shall be given or received by such Effective Time Holders individually), (ii) authorize deliveries to Acquirer of cash from the Escrow Fund in satisfaction of claims asserted by Acquirer (on behalf of itself or any other Indemnified Person, including by not objecting to such claims), (iii) object to such claims pursuant to Section 8.5, (iv) consent or agree to, negotiate, enter into, or, if applicable, prosecute or defend, settlements and compromises of, and comply with orders of courts with respect to, such claims, (v) provide any consents hereunder, including with respect to any proposed settlement of any claims or agree to any amendment to this Agreement, (vi) take any of the actions set forth in Section 9.2 and (vii) take all actions necessary or appropriate in the judgment of the Stockholders' Agent for the accomplishment of the foregoing, in each case without having to seek or obtain the consent of any Person under any circumstance. Notwithstanding the foregoing, the Stockholders' Agent shall have no obligation to act on behalf of the Effective Time Holders, except as expressly provided herein, in the Escrow Agreement and in the Stockholders' Agent Engagement Agreement and for purposes of clarity, there are no obligations of the Stockholders' Agent in any ancillary agreement, schedule, exhibit or the Company Disclosure Schedule. The Stockholders' Agent shall be entitled to: (a) rely upon the Closing Spreadsheet, (b) rely upon any signature believed by it to be genuine, and (c) reasonably assume that a signatory has proper authorization to sign on behalf of the applicable Effective Time Holder or other party. The Stockholders' Agent may resign at any time. The Person serving as the Stockholders' Agent may be replaced from time to time by the holders of a majority in interest of the cash then on deposit in the Escrow Fund upon not less than 10 days' prior written notice to Acquirer. No bond shall be required of the Stockholders' Agent. The powers, immunities and rights to indemnification granted to the Stockholders' Agent Group hereunder: (i) are coupled with an interest and shall be irrevocable and survive the death, incompetence, bankruptcy or liquidation of any Effective Time Holder and shall be binding on any successor thereto, and (ii) shall survive the delivery of an assignment by any Effective Time Holder of the whole or any fraction of his, her or its interest in the Escrow Fund.

(b) Certain Effective Time Holders have entered into an engagement agreement (the "**Stockholders' Agent Engagement Agreement**") with the Stockholders' Agent to provide direction to the Stockholders' Agent in connection with its services under this Agreement, the Escrow Agreement and the Stockholders' Agent Engagement Agreement (such Effective Time Holders, including their individual representatives, collectively hereinafter referred to as the "**Advisory Group**"). Neither the Stockholders' Agent nor its members, managers, directors, officers, contractors, agents and employees nor any member of the Advisory Group, in such member's capacity as such (the Stockholders' Agent and such other Persons collectively, the "**Stockholders' Agent Group**"), shall be liable to any Effective Time Holder for any act done or omitted hereunder, under the Escrow Agreement or under the Stockholders' Agent Agreement while acting in good faith (and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith) and without gross negligence or

willful misconduct. The Effective Time Holders shall indemnify, defend and hold harmless the Stockholders' Agent Group from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "**Stockholders' Agent Expenses**") arising out of or in connection with the Stockholders' Agent's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Stockholders' Agent Expense is suffered or incurred; *provided*, that in the event that any such Stockholders' Agent Expense is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of a member of the Stockholders' Agent Group, such member will reimburse the Effective Time Holders the amount of such indemnified Stockholders' Agent Expense previously paid to such member in respect of such member's Stockholders' Agent Expenses to the extent attributable to such member's gross negligence or willful misconduct. If not paid directly to the Stockholders' Agent by the Effective Time Holders, any such Stockholders' Agent Expenses may be recovered by the Stockholders' Agent Group from (i) the funds in the Expense Fund and (ii) the amounts in the Escrow Fund at such time as remaining amounts would otherwise be distributable to the Effective Time Holders; *provided*, that while this Section allows the Stockholders' Agent Group to be paid from the aforementioned sources of funds, this does not relieve the Effective Time Holders from their obligation to promptly pay such Stockholders' Agent Expenses as they are suffered or incurred, nor does it prevent the Stockholders' Agent from seeking any remedies available to it at law or otherwise. In no event will the Stockholders' Agent be required to advance its own funds on behalf of the Effective Time Holders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Effective Time Holders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Stockholders' Agent Group under this Section. The foregoing indemnities will survive the Closing, the resignation or removal of the Stockholders' Agent or the termination of this Agreement.

(c) The Expense Fund Amount shall be held by the Stockholders' Agent in a segregated client account and shall be used (i) for the purposes of paying directly or reimbursing the Stockholders' Agent for any Stockholders' Agent Expenses incurred pursuant to this Agreement, the Escrow Agreement or any Stockholders' Agent Engagement Agreement, or (ii) as otherwise determined by the Advisory Group (the "**Expense Fund**"). For the avoidance of doubt, any amounts paid by Acquirer in respect of the Expense Fund shall be treated for Tax purposes as having been received and voluntarily set aside by the Effective Time Holders at the time of payment by Acquirer, and any Tax withholding with respect to such deemed contribution by any Effective Time Holder shall be satisfied from such Effective Time Holder's share of other funds payable to such Effective Time Holder at such time and shall not reduce the Expense Fund. The Stockholders' Agent is not providing any investment supervision, recommendations or advice and shall have no responsibility or liability for any loss of principal of the Expense Fund other than as a result of its gross negligence or willful misconduct. The Stockholders' Agent is not acting as a withholding agent or in any similar capacity in connection with the Expense Fund, and has no tax reporting or income distribution obligations. The Effective Time Holders will not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Stockholders' Agent any ownership right that they may otherwise have had in any such interest or earnings. Subject to Advisory Group approval, the Stockholders' Agent may contribute funds to the Expense Fund from any consideration otherwise distributable to the Effective Time Holders. As soon as reasonably determined by the Stockholders' Agent that the Expense Fund is no longer required to be withheld, the Stockholders' Agent shall distribute the remaining Expense Fund (if any) to the Escrow Agent (or Acquirer if so instructed by Acquirer) for further distribution to the Effective Time Holders.

(d) Any notice or communication given or received by, and any decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Stockholders' Agent that is within the scope of the Stockholders' Agent's authority under Section 8.7(a) shall constitute a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of all the Effective Time Holders and shall be final, binding and conclusive upon each such Effective Time Holder, and such Effective Time Holder's successors as if expressly confirmed and ratified

in writing by such Effective Time Holder, and all defenses which may be available to any Effective Time Holder to contest, negate or disaffirm the action of the Stockholders' Agent taken in good faith under this Agreement, the Escrow Agreement or the Stockholders' Agent Engagement Agreement are waived. Each Indemnified Person shall be entitled to rely upon any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction as being a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, each and every such Effective Time Holder.

8.8 Third-Party Claims. In the event Acquirer becomes aware of a third-party claim that Acquirer believes may result in a claim for indemnification pursuant to this Article VIII by or on behalf of an Indemnified Person, Acquirer shall have the right in its sole discretion to conduct the defense of and to settle or resolve any such claim (and the costs and expenses incurred by Acquirer in connection with such defense, settlement or resolution (including reasonable attorneys' fees, other professionals' and experts' fees and court or arbitration costs) shall be included in the Indemnifiable Damages for which Acquirer may seek indemnification pursuant to a claim made hereunder and such costs and expenses shall constitute Indemnifiable Damages subject to indemnification under Section 8.2 whether or not it is ultimately determined that the third party claim itself is indemnifiable under Section 8.2, but for the avoidance of doubt, in all cases subject to the other limitations on liability contained herein (including the Threshold and any cap amount, in each case that applies to the underlying indemnifiable matter)). The Stockholders' Agent shall have the right to receive copies of all pleadings, notices and communications with respect to the third-party claim to the extent that receipt of such documents does not affect any privilege relating to any Indemnified Person and subject to execution by the Stockholders' Agent of a reasonable non-disclosure agreement (which non-disclosure agreement shall not prohibit the Stockholders' Agent from communicating any such information on a need-to-know basis with the Effective Time Holders, *provided* that any such recipients are obligated to keep such information confidential) to the extent that such materials contain confidential or proprietary information; *provided*, that Acquirer shall use commercially reasonable efforts to provide any such privileged information to the Stockholders' Agent in a manner that would not adversely affect any such applicable privileges. Acquirer shall (x) keep the Stockholders' Agent reasonably informed of the status of such third-party claim and the defense thereof and (y) consider in good faith any recommendations made by the Stockholders' Agent with respect to such third-party claim. In the event of settlement or resolution by Acquirer of any claim that gives rise to a claim against the Escrow Fund by or on behalf of an Indemnified Person, the amount of Indemnifiable Damages relating to such matter shall be deemed determined only if the Stockholders' Agent has consented in writing to any such settlement or resolution, or if the Stockholders' Agent unreasonably withholds, conditions or delays giving such consent to such settlement or resolution (either, an "**Indemnifiable Settlement**"). Such consent of the Stockholders' Agent shall be deemed to have been given unless the Stockholders' Agent shall have objected within 30 days after a written request for such consent by Acquirer. Neither the Stockholders' Agent nor any Effective Time Holder shall have any power or authority to object under Section 8.5 or any other provision of this Article VIII to the amount of Indemnifiable Damages with respect to an Indemnifiable Settlement. For the avoidance of doubt, Section 5.17(d) and not this Section 8.8 shall govern all Tax Claims.

8.9 Treatment of Indemnification Payments. Acquirer, the Stockholders' Agent and the Effective Time Holders agree to treat (and cause their respective Affiliates to treat) any payment received by the Indemnified Persons pursuant to this Article VIII as adjustments to the Total Merger Consideration for all Tax purposes to the maximum extent permitted by Legal Requirements.

8.10 Exclusive Remedy. Other than with respect to non-monetary specific performance or other non-monetary equitable relief, this Article VIII shall constitute the sole and exclusive remedy after the Closing for recovery of Indemnifiable Damages by the Indemnified Persons pursuant to or in connection with this Agreement and the transactions contemplated hereby. It is the express intent of the parties that, if an applicable survival period as contemplated by this Agreement is shorter than the statute of limitations that would otherwise apply, then, by contract, the applicable statute of limitations shall be reduced to the survival period contemplated hereby. The parties

further acknowledge that the time periods set forth in this Article VIII for the assertion of claims under this Agreement are the result of arms'-length negotiation among the parties and that they intend for the time periods to be enforced as agreed by the parties.

ARTICLE IX

GENERAL PROVISIONS

9.1 Notices. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received (i) upon receipt when delivered by hand, (ii) upon transmission, if sent by electronic mail transmission (in each case with receipt verified by electronic confirmation or absent such verification on the next following Business Day), or (iii) one Business Day after being sent by courier or express delivery service; *provided*, that in each case the notice or other communication is sent to the address, facsimile telephone number or electronic mail address set forth beneath the name of such party below (or to such other address, facsimile telephone number or electronic mail address as such party shall have specified in a written notice given to the other parties hereto):

If to Acquirer or Sub, to:

MongoDB, Inc.
1633 Broadway, 38th Floor
New York, NY 10019
Attention: Andrew Stephens, General Counsel
Email: andrew.stephens@mongodb.com
with a copy (which shall not constitute notice) to:
Cooley LLP
3175 Hanover St.
Palo Alto, CA 94304
Attention: Steve Tonsfeldt
Email: stonsfeldt@cooley.com

If to the Company, to:

mLab
660 York St, Ste 101
San Francisco, CA 94110
Attention: William Shulman
Email: will@mlab.com
with a copy (which shall not constitute notice) to:
Fenwick & West LLP
902 Broadway, Suite 14
New York, NY 10010
Attention: Ethan Skerry
Email: eskerry@fenwick.com

If to the Stockholders' Agent or, after the Closing, to the Effective Time Holders, to:

Shareholder Representative Services LLC
950 17TH Street, Suite 1400
Denver, CO 80202
Attention: Managing Director
Email: deals@srsacquiom.com

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

Fenwick & West LLP
902 Broadway, Suite 14
New York, NY 10010
Attention: Ethan Skerry
Email: eskerry@fenwick.com

9.2 Amendment or Waiver. This Agreement may not be amended, altered or modified except by a written instrument executed by Acquirer, on the one hand, and the Company (if prior to the Closing) or the Stockholders' Agent (if after the Closing), on the other hand. No course of dealing between or among any Persons having any interest in this Agreement will be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Person under or by reason of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

9.3 Interpretation. When a reference is made in this Agreement to Articles, Sections or Exhibits, such reference shall be to an Article or Section of, or an Exhibit to this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The phrases "provided to," "made available," "furnished to," and phrases of similar import when used herein, unless the context otherwise requires, shall mean, with respect to any statement in Article II of this Agreement to the effect that any information, document or other material has been "delivered" or "provided" to Acquirer or its representatives, that such information, document, or material was (a) made available for review (on a continuous basis and without subsequent modification) by the Company to Acquirer or its representatives in the virtual data room set up by the Acquirer in connection with this Agreement at least one (1) Business Day prior to the Agreement Date or (b) actually delivered (whether by physical or electronic delivery) upon request to Acquirer or its representatives at least one (1) Business Day prior to the Agreement Date. Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; and (iii) the terms "hereof," "herein," "hereunder" and derivative or similar words refer to this entire Agreement.

9.4 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood that all parties hereto need not sign the same counterpart. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

9.5 Entire Agreement; Non-assignability; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including all the Exhibits attached hereto, the Schedules, including the Company Disclosure Schedule, (i) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof, except for the Confidentiality Agreement shall continue in full force and effect, and shall survive any termination of this Agreement, in accordance with its terms, (ii) are not intended to confer, and shall not be construed as conferring, upon any Person other than the parties hereto any rights or remedies hereunder (except that Article VIII is intended to benefit Indemnified Persons and that Section 5.18 is intended to benefit the D&O Indemnified Parties) and (iii) shall not be assigned by operation of law or otherwise except as otherwise specifically provided herein.

9.6 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void, except that Acquirer may assign this Agreement to any direct or indirect wholly owned subsidiary of Acquirer without the prior consent any other party hereto; *provided* that Acquirer shall remain liable for all of its obligations under this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

9.7 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably necessary to effect the intent of the parties hereto. The parties hereto shall use all reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.8 Remedies Cumulative. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party hereto of any one remedy shall not preclude the exercise of any other remedy and nothing in this Agreement shall be deemed a waiver by any party of any right to specific performance or injunctive relief. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity, and the parties hereto hereby waive the requirement of any posting of a bond in connection with the remedies described herein.

9.9 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic Laws of the State of New York, without giving effect to any choice of Law or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of New York. Each of the Parties hereto hereby irrevocably submits to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan in the state of New York over an action brought by any Party arising out of or relating to this Agreement, and each of the Parties hereto hereby irrevocably agrees that all claims with respect to any such action shall be heard and determined in such courts. In the event of any litigation regarding or arising from this Agreement, the prevailing party shall be entitled to recover its reasonable expenses, attorneys' fees and costs incurred therein or in enforcement or collection of any judgment or award rendered therein.

9.10 Rules of Construction. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, each Schedule and each Exhibit attached hereto, the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

9.11 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

9.12 Waiver of Conflicts; Privilege. Each of Acquirer, Sub and the Company hereby irrevocably acknowledges and agrees that: (a) the Company Securityholders and the Stockholders' Agent and/or their respective Affiliates, and each of them, shall have the right to retain Fenwick & West LLP ("**Fenwick**") to represent their interests in any matter or dispute arising under or in connection with this Agreement, any agreement entered into pursuant to this Agreement, or the transactions contemplated hereby or thereby or any matter related to any of the foregoing (a "**Transaction Dispute**"), (b) each of Acquirer, Sub and the Company irrevocably waives, consents to and covenants not to assert any objection, based on conflict of interest or otherwise, to any representation of the Company Securityholders, the Stockholders' Agent and/or their respective Affiliates by Fenwick in any Transaction Dispute and (c) all privileged communications prior to the Closing between the Company Securityholders, the Stockholders' Agent, the Company or any of their respective Affiliates, directors, managers, officers, employees or representatives, on the one hand, and Fenwick, on the other hand, made in connection with the negotiation, preparation, execution, delivery and closing under, or any dispute arising in connection with, this Agreement or any agreement entered into pursuant to this Agreement, or otherwise relating to the foregoing or any potential sale of the Company, shall be deemed to be privileged and confidential communications of the Company Securityholders and the Stockholders' Agent, and the control of the confidentiality and privilege applicable thereto shall be retained by the Company Securityholders and the Stockholders' Agent and all other communications prior to the Closing between such Persons, any third parties and Fenwick shall be deemed to be the confidential communications of the Company Securityholders and the Stockholders' Agent. Notwithstanding the foregoing, in the event that a dispute arises between Acquirer, the Surviving Corporation or any of their respective Affiliates, on the one hand, and a Person other than a party to this Agreement or its Affiliates, on the other hand, after the Closing, Acquirer, the Surviving Corporation and any of their respective Affiliates may assert the attorney-client privilege to prevent disclosure to such third-party of such privileged communications; *provided* that none of Acquirer, the Surviving Corporation or any of their respective Affiliates may waive such privilege without the prior written consent of the Stockholders' Agent (such consent not to be unreasonably withheld, conditioned or delayed).

[SIGNATURE PAGE NEXT]

IN WITNESS WHEREOF, Acquirer, Sub, the Company and the Stockholders' Agent have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized, all as of the date first written above.

ACQUIRER:

MONGODB, INC.

By: /s/ Dev Ittycheria
Name: Dev Ittycheria
Title: President and Chief Executive Officer

SUB:

MAMMOTH MERGER SUB, INC.

By: /s/ Andrew Stephens
Name: Andrew Stephens
Title: President, Chief Executive Officer and Secretary

STOCKHOLDERS' AGENT:

**SHAREHOLDER REPRESENTATIVE SERVICES LLC, SOLELY IN ITS CAPACITY
AS THE STOCKHOLDERS' AGENT**

By: /s/ Kimberley Angilly
Name: Kimberley Angilly
Title: Director

COMPANY:

OBJECT LABS CORPORATION

By: /s/ William Shulman
Name: William Shulman
Title: Chief Executive Officer

**Certification by the Chief Executive Officer pursuant to
Securities Exchange Act Rules 13a-14(a) and 15d-14(a)
as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Dev Ittycheria, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of MongoDB, Inc. (the “registrant”) for the fiscal quarter ended October 31, 2018;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 6, 2018

By: /s/ Dev Ittycheria

Name: Dev Ittycheria

Title: President and Chief Executive Officer
(*Principal Executive Officer*)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Dev Ittycheria, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of MongoDB, Inc. for the fiscal quarter ended October 31, 2018 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of MongoDB, Inc.

Date: December 6, 2018

By: /s/ Dev Ittycheria

Name: Dev Ittycheria

Title: President and Chief Executive Officer
(Principal Executive Officer)

This certification accompanies the Quarterly Report, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of MongoDB, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report on Form 10-Q), irrespective of any general incorporation language contained in such filing.

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael Gordon, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of MongoDB, Inc. for the fiscal quarter ended October 31, 2018 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of MongoDB, Inc.

Date: December 6, 2018

By: /s/ Michael Gordon
Name: Michael Gordon
Title: Chief Financial Officer
(Principal Financial Officer)

This certification accompanies the Quarterly Report, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of MongoDB, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report on Form 10-Q), irrespective of any general incorporation language contained in such filing.