AGREEMENT AND PLAN OF MERGER

BY AND AMONG

ACUITYADS US INC.

AA ACQUISITION CORP.

VISIBLE MEASURES CORP.

[Name Redacted] in his capacity as Stockholder Representative

AND

THE MAJORITY STOCKHOLDERS named herein

March 9, 2017

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is made as of March 9, 2017, by and among (i) AcuityAds US Inc., a corporation incorporated under the laws of New York (the "**Parent**"), (ii) AA Acquisition Corp., a corporation organized under the laws of Delaware and a wholly-owned subsidiary of Parent ("**Merger Sub**"), (iii) Visible Measures Corp., a corporation organized under the laws of Delaware (the "**Company**"), (iv) each Person set forth on the signature pages hereof, constituting the holders of more than 50% of the voting power of the outstanding shares of capital stock of the Company (each, a "**Majority Stockholder**" and, collectively, the "**Majority Stockholders**"), and (v) [Name Redacted] in his capacity as the Stockholder Representative.

RECITALS

A. Parent has made an offer to acquire 100% of the outstanding capital stock of the Company and has organized Merger Sub to facilitate such transaction (such transaction, the "**Merger**").

B. The Board of Directors of the Company (the "**Board**") has unanimously determined that this Agreement and the transactions contemplated hereby, including the Merger, are advisable and fair to, and in the best interests of, the Company and its stockholders and has unanimously adopted resolutions approving the execution of this Agreement and the consummation of the transactions contemplated hereby and recommending that the Company's stockholders adopt this Agreement in accordance with the Delaware General Corporation Law (the "**Corporation Law**").

C. The boards of directors of each of Parent and Merger Sub have approved and declared advisable and in the best interests of Parent and Merger Sub, respectively, this Agreement and the transactions contemplated hereby, including the Merger, and the Board of Directors of Merger Sub has determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of its stockholder;

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

ARTICLE 1
DEFINITIONS

1.1 Defined Terms.

For purposes of this Agreement, the following terms have the meanings set forth below:

"**Accounting Firm**" means an independent nationally recognized accounting firm chosen by the Stockholder Representative from a list of three candidates provided by the Parent.

"**Acquisition Proposal**" means any inquiry, proposal or offer from any Person (other than Parent, Merger Sub or any of their Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving the Company; (ii) the issuance or acquisition of shares of capital stock or other equity securities of the Company or any of its subsidiaries; or (iii) the sale, lease, exchange or other disposition of all or substantially all of the Company's properties or assets.

"**Action**" means any action, suit, proceeding, hearing, investigation, arbitration or other legal or administrative proceeding.

"**Adjusted Closing Merger Consideration**" has the meaning set forth in Section 3.4(d).

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. A Person is deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract, or otherwise. With respect to a natural Person, the term "Affiliate" includes such Person's spouse, children (including adopted children and step-children), grandchildren, brothers, sisters and parents.

"**Agreement**" has the meaning set forth in the opening paragraph.

"**Anti-Terrorism Laws**" has the meaning set forth in Section 4.24(b).

"**Board**" has the meaning set out in the Recitals.

"**Business**" means the business of (i) selling online video advertising and (ii) providing software analytics products and solutions to measure the effectiveness of web-based advertising initiatives.

"**Business Data**" means all business information and all personally-identifying information and data (whether of employees, contractors, consultants, customers, consumers, or other Persons and whether in electronic or any other form or medium) that is accessed, collected, used, processed, stored, shared, distributed, transferred, disclosed, destroyed, or disposed of by any of the Business Systems.

"**Business Day**" means a day other than a Saturday, a Sunday, or any other day on which the principal chartered banks located in Toronto, Ontario or Boston, Massachusetts are not open for business.

"**Business Systems**" means all software (including Company Software), computer hardware (whether general or special purpose), electronic data processing, information, record keeping, communications, telecommunications, networks, interfaces, platforms, servers, peripherals, and computer systems, including any outsourced systems and processes that are owned or used by or for the Company or any of its subsidiaries in the conduct of the Business.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"**Closing**" has the meaning set forth in Section 2.2.

"**Closing Date**" has the meaning set forth in Section 2.2.

"**Closing Payment**" has the meaning set forth in Section 3.1(a).

"**Closing Working Capital Statement**" has the meaning set forth in Section 3.4(b).

"**COBRA**" means the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar state law.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder and any successor statute and the rules and regulations issued thereunder.

"**Company**" has the meaning set forth in the Recitals.

"**Company Board Recommendation**" has the meaning set forth in Section 7.4(a).

"Company Common Stock" means the common stock of the Company, par value $0.01 per share.

"**Company Intellectual Property**" means Owned Intellectual Property, the Licensed Intellectual Property and all other Intellectual Property used in, or related to, the Business.

"**Company Knowledge**" or any similar phrase means the actual knowledge of either Brian Shin or Jeff Wakely, in their respective capacities as directors and operating officers of the Company, after review of the Company's files, this Agreement and the Disclosure Schedule.

"**Company Preferred Stock**" means the Series A-1 Preferred Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock.

"**Company Software**" has the meaning set forth in Section 4.13(a).

"**Company Stockholder**" means any holder of Company Common Stock or Company Preferred Stock.

"**Confidential Information**" means any and all (a) trade secrets concerning the business and affairs of the Company and any of its subsidiaries, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, past, current and planned manufacturing or distribution methods and processes, past, current and planned service methods, customer lists, current and anticipated customer requirements, price lists and terms for customers and vendors, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures, and architectures (and related formulae, compositions, processes, improvements, devices, inventions, discoveries, concepts, ideas, designs, methods and information); (b)

information concerning the business and affairs of the Company and its subsidiaries, including, without limitation, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, prospective services, entry into new markets, the names and backgrounds of key personnel, distributors, agents or representatives and personnel training and techniques and materials, however documented; (c) notes, analyses, compilations, studies, summaries, and other material prepared by or for the Company or any of its subsidiaries containing or based, in whole or in part, on any information included in the foregoing; and (d) the terms of this Agreement and the Transaction Documents and all negotiations related hereto or thereto. All information that is treated by the Company or any of its subsidiaries as being confidential will be presumed to be Confidential Information.

"**Damages**" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, Liabilities, obligations, Taxes, Liens, losses, lost profits, reductions in value, deficiencies, expenses, and fees, including court costs and attorneys' fees and expenses.

"**Data Security Requirements**" means, collectively, all of the following to the extent relating to Data Treatment or otherwise relating to privacy, security, or security breach notification requirements and applicable to the Company or any of its subsidiaries, to the conduct of the Business, or to any of the Business Systems or any Business Data: (a) the Company's own rules, policies, and procedures; (b) all Legal Requirements; (c) industry standards applicable to the industry in which the Business operates (including, if applicable, the Payment Card Industry Data Security Standard (PCI DSS)); and (d) Contracts into which the Company or any of its subsidiaries has entered or by which it is otherwise bound.

"**Data Treatment**" means the access, collection, use, processing, storage, sharing, distribution, transfer, disclosure, security, destruction, or disposal of any personal, sensitive, or confidential information or data (whether in electronic or any other form or medium).

"**Debt**" means (a) indebtedness for borrowed money; (b) indebtedness secured by any Lien on property owned whether or not the indebtedness secured has been assumed; (c) indebtedness evidenced by notes, bonds, debentures, outstanding checks, bankers' acceptances or similar instruments; (d) capital leases, including, without limitation, all amounts representing the capitalization of rentals in accordance with GAAP; (e) "earnouts" and similar payment obligations; (f) obligations under letters of credit; (g) advances under factoring agreements; (h) net cash payment obligations under swaps, options, derivatives and other hedging agreements or arrangements that will be payable upon termination thereof (assuming they were terminated on the date of determination); (i) shareholder loans and other amounts owing to shareholders in such capacity; (j) guarantees with respect to liabilities of a type described in any of clauses (a) through (i) above; and (k) interest, penalties, premiums, fees and expenses related to any of the foregoing. For certainty, the indebtedness listed on Schedule A shall be considered Debt of the Company.

"**Decrease Amount**" has the meaning set forth in Section 3.4(d)(i).

"**Disclosure Schedule**" means the disclosure schedule attached to this Agreement, which sets forth the exceptions to the representations and warranties of the Company contained in Article 4.

"**Dissenting Shares**" has the meaning set forth in Section 2.11.

"**Effective Time**" has the meaning set forth in Section 2.2.

"**Employee Benefit Plan**" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) and any other employee benefit plan, program, agreement or arrangement of any kind.

"**Employment Agreements**" means the Employment Agreements and Non-Competition, Non-Solicitation and Confidentiality Agreements to be entered into at the Closing by and between the Company, on the one hand, and each of Ronald Tache and Seraj Bharwani on the other hand, in the forms agreed upon by the parties thereto.

"**Environmental Laws**" means all Legal Requirements concerning public health and safety, worker health and safety, pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labelling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Substances, noise or radiation.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations issued thereunder and any successor statute and the rules and regulations issued thereunder.

"**ERISA Affiliate**" means each entity that is treated as a single employer with the Company for purposes of Section 414 of the Code or Section 4001(a)(14) or 4001(b) of ERISA.

"**Escrow Agent**" means Cassels Brock & Blackwell LLP.

"**Escrow Agreement**" means the escrow agreement dated as of the Closing Date between Parent, Majority Stockholders and the Escrow Agent.

"**Escrow Amount**" means the sum of $1,000,000.

"**Escrow Claim**" has the meaning set forth in Section 3.5(b).

"**Escrow Period**" means the period commencing on the Closing Date and ending on the 183rd day following the Closing Date.

"**Estimated Closing Balance Sheet**" has the meaning set forth in Section 3.4(a).

"**Estimated Net Working Capital**" has the meaning set forth in Section 3.4(a).

"**Final Net Working Capital**" has the meaning set forth in Section 3.4(d).

"**Financial Statements**" has the meaning set forth in Section 4.6.

"**Fundamental Representations and Warranties**" means the representations and warranties set forth in Section 4.1 (Organization, Power and Authorization), Section 4.4 (Capitalization) and Section 4.8 (Title to Assets).

"**GAAP**" means United States generally accepted accounting principles as in effect from time to time.

"**Government Entity**" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi governmental authority of any nature; (d) multi-national organization or body; or (e) Person exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

"**Hazardous Substance**" means any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, by-product, or any other material or article, that is listed or regulated under applicable Environmental Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant," or is otherwise listed or regulated under applicable Environmental Laws because it poses a hazard to human health or the environment; including without limitation hazardous substances as defined in CERCLA, petroleum products, by-products or derivatives thereof, asbestos, urea formaldehyde foam insulation, and lead-containing paints or coatings.

"**Increase Amount**" has the meaning set forth in Section 3.4(d)(ii).

"**Indemnified Party**" means a party who is seeking indemnification under Article 8.

"**Indemnifying Party**" means a party from whom indemnification is being sought under Article 8.

"**Insurance Policies**" has the meaning set forth in Section 4.17.

"**Intellectual Property**" means all of the following throughout the world: (a) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice) and any foreign equivalents, international applications, national phase entry applications, reissues, continuations, continuations-in-part, divisions, continued prosecution applications, extensions, as well as all reissues or re-examinations thereof; (b) trademarks, service marks, trade dress, logos, slogans, trade names, internet domain names, corporate names and other indicia of source and all registrations and applications for registration thereof, in any jurisdiction, together with all goodwill associated therewith; (c) copyrights and works of authorship (whether registered or not), and all registrations and applications for registration thereof; (d) mask works and all registrations and applications for registration thereof; (e) computer software (including source code, object code, data, data bases and related documentation); (f) trade secrets, confidential information, and proprietary data and information (including compilations of data (whether or not copyrighted or copyrightable), ideas, formulae, compositions, blends, processes, know-how, methodologies, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, improvements, proposals, technical data, financial and accounting data, business and marketing plans, and customer and

supplier lists and related information); (g) design patents, industrial designs and all registrations and applications thereof, in any jurisdiction; (h) all other intellectual property rights; and (i) all copies and tangible embodiments of the foregoing (in whatever form or medium).

"**Intellectual Property Agreements**" means all Contracts related to Intellectual Property, including any licenses by or to the Company or any of its subsidiaries, any settlement, development, hosting or other similar services contracts.

"**Latest Balance Sheet**" has the meaning set forth in Section 4.6.

"**Leased Real Property**" has the meaning set forth in Section 4.14(a).

"**Legal Requirement**" means any law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, judgment, order, decree, treaty, rule, regulation, ruling, determination, charge, direction or other restriction of an arbitrator or Government Entity.

"**Liability**" means any liability or obligation of any kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due and whether direct or indirect), including any liability for Taxes.

"**Licensed Intellectual Property**" has the meaning set forth in Section 4.13(b).

"**Lien**" means any mortgage, pledge, lien, encumbrance, charge, assessment, deed of trust, lease, adverse claim, levy, restriction on transfer, any conditional sale or title retention agreement or other security interest.

"**Majority Stockholders**" has the meaning set out in the Recitals.

"**Material Adverse Effect**" means any effect that has (or could reasonably be expected to have) a material adverse effect on the business, assets, condition (financial or otherwise), operating results, operations or business prospects of the Company or any of its subsidiaries (individually or taken as a whole), or on the ability of the Company to consummate the transactions contemplated by this Agreement, excluding any adverse effect arising from (i) a change in general economic conditions or the industry in which the Company operates that does not affect the Company in a materially disproportionate matter or (ii) a change in applicable Legal Requirements or GAAP or (iii) the announcement or consummation of the Merger or (iv) earthquakes, hurricanes, floods or other natural disasters, acts of war (whether or not declared), armed hostilities, sabotage or terrorism or the threat thereof, change in political environment or any worsening thereof or actions taken in response thereto.

"**Merger Consideration**" has the meaning set forth in Section 3.1.

"**Net Working Capital**" means, as of a given date, (a) the sum of the Company's cash, accounts receivable (net of allowance for rebates, returns and doubtful accounts) plus inventories (net of any reserves), prepaid expenses and other current assets; minus (b) the sum of the Company's accounts payable, accrued expenses and other current liabilities which shall include any severance costs which are not included in the

Transaction Expenses in connection with the termination of any employees of the Company prior to or upon the Closing, including the terminations provided for in Section 6.1(h), but shall not include any and all expenses in respect of the transactions contemplated herein, all of which shall be paid out of the Merger Consideration as provided herein; provided, however, that the following will be excluded from the determination of Net Working Capital: deferred Taxes and Tax benefits, Taxes payable, management fees payable to any Company Stockholder or any Affiliates of any Company Stockholder.

"**Notice of Escrow Claim**" has the meaning set forth in Section 3.5(b)(i).

"**Option**" has the meaning set forth in Section 2.7.

"**Outside Date**" means April 15, 2017 or such other date agreed to in writing by the parties.

"**Owned Intellectual Property**" means all Intellectual Property owned by the Company or any of its subsidiaries, along with all income, royalties, damages and payments accrued, due or payable as of the Closing Date, including the Intellectual Property listed on Section 4.13(a) of the Disclosure Schedule.

"Parent" has the meaning set forth in the Recitals.

"**Parent Indemnitees**" has the meaning set forth in Section 8.2(a).

"**Patriot Act**" has the meaning set forth in Section 4.24(b).

"**Pending Escrow Claim**" means any Notices of Escrow Claims pending as of the Release Date (which, for greater certainty, include Notices of Escrow Claims disputed by the Majority Stockholders).

"**Permits**" has the meaning set forth in Section 4.21.

"**Person**" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, an estate, a labor union or a Government Entity.

"**Per-Share Merger Consideration**" has the meaning set forth in Section 3.2.

"**Plan**" means the Company's employee stock option plan.

"**Pre-Closing Tax Period**" means any taxable period ending on or before the Closing Date, and, with respect to any Straddle Period, means the portion of such taxable period ending on the Closing Date.

"**Real Property Leases**" has the meaning set forth in Section 4.14(a).

"**Release Date**" has the meaning set forth in Section 3.5(b)(iii).

"**Representatives**" means a Person's employees, officers, directors, advisors, consultants, representatives or agents.

"**Requisite Company Vote**" has the meaning set forth in Section 4.1(b).

"**Scheduled Contracts**" has the meaning set forth in Section 4.18(a).

"**Series A Liquidation Preference Price**" means $0.6776 per share for each share of Series A Preferred Stock outstanding as of the Effective Time.

"**Series A Preferred Stock**" means the Series A Preferred Stock of the Company, par value $0.001 per share.

"**Series A-1 Liquidation Preference Price**" means $0.65413 per share for each share of Series A-1 Preferred Stock outstanding as of the Effective Time.

"**Series A-1 Preferred Stock**" means the Series A-1 Preferred Stock of the Company, par value $0.001 per share.

"**Series B Liquidation Preference Price**" means $1.806 per share for each share of Series B Preferred Stock outstanding as of the Effective Time.

"**Series B Preferred Stock**" means the Series B Preferred Stock of the Company, par value $0.001 per share.

"**Series C Liquidation Preference Price**" means $2.10137 per share for each share of Series C Preferred Stock outstanding as of the Effective Time.

"**Series C Preferred Stock**" means the Series C Preferred Stock of the Company, par value $0.001 per share.

"**Series D Liquidation Preference Price**" means $2.78975 per share for each share of Series D Preferred Stock outstanding as of the Effective Time.

"**Series D Preferred Stock**" means the Series D Preferred Stock of the Company, par value $0.001 per share.

"**Series E Liquidation Preference Price**" means $4.1253 per share for each share of Series E Preferred Stock outstanding as of the Effective Time.

"**Series E Preferred Stock**" means the Series E Preferred Stock of the Company, par value $0.001 per share.

"**Settlement Agreement**" means that certain settlement agreement dated May 9, 2015 between the Company and [Names Redacted].

"**Shares**" has the meaning set forth in Section 2.6.

"**Stockholder Indemnitees**" has the meaning set forth in Section 8.3.

"**Stockholder Representative**" has the meaning set forth in Section 10.2.

"**Surviving Corporation**" has the meaning set forth in Section 2.1.

"**Straddle Period**" has the meaning set forth in Section 8.2(b)(ii).

"**Target Working Capital**" means $0.

"**Tax**" or "**Taxes**" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, accumulated earnings, unclaimed property, escheat, taxes under Section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind, including any interest, penalty or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax Liability of any other Person.

"**Tax Contest**" has the meaning set forth in Section 7.12(a).

"**Tax Return**" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes (including any schedule or attachment thereto, and any amendment thereof).

"**Third Party Claim**" has the meaning set forth in Section 8.5(a).

"**Transaction Documents**" means this Agreement, the Employment Agreements, the Escrow Agreement and the other agreements, documents, certificates or instruments delivered by the parties in connection with the Closing.

"**Transaction Expenses**" has the meaning set forth in Section 3.1(e).

"**Working Capital Adjustment**" has he meaning set forth in Section 3.1(c).

1.2 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

(a) the terms "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;

(b) time shall be of the essence of this Agreement;

(c) words importing the singular number only shall include the plural and vice versa and words importing the use of any gender shall include all genders;

(d) the word "including" is deemed to mean including without limitation;

(e) the terms "party" and "the parties" refer to a party or the parties to this Agreement;

(f) any reference to this Agreement means this Agreement as amended, modified, replaced or supplemented from time to time;

(g) all dollar amounts refer to U.S. dollars;

(h) any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and

(i) whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Business Day, such payment shall be made, action shall be taken or period shall expire on the next following Business Day.

ARTICLE 2
MERGER

2.1 The Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the relevant provisions of the Corporation Law, at the Effective Time, Merger Sub shall be merged with and into the Company. The Company shall be the surviving corporation in the Merger (the "**Surviving Corporation**") under the name "Visible Measures Corp." and shall continue its existence under the Corporation Law. In connection with the Merger, the separate corporate existence of Merger Sub shall cease.

2.2 Consummation of the Merger; Closing. Upon the terms and subject to the conditions set forth herein, Merger Sub and the Company shall cause the Merger to be consummated by filing with the Secretary of State of the State of Delaware a duly executed certificate of merger (the "**Certificate of Merger**"), as required by the Corporation Law, which shall specify the date (the "**Closing Date**") and time mutually agreed by the parties at which the Merger will become effective (the "**Effective Time**"). Contemporaneously with the filing referred to in this Section 2.2, a closing (the "**Closing**") will be held electronically through the exchange of pdf copies of relevant documents (or at a place as the parties may mutually agree) for the purpose of confirming all the matters contained herein, which will take place as promptly as is practicable following satisfaction or waiver of the conditions set forth in Article 6, but, unless the Parent, Merger Sub and the Company otherwise agree, in no event later than four Business Days following the expiry of the 20 day period required by Section 262 of the Corporation Law for the exercise of any dissent rights. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or at such later time as the parties shall agree and as shall be set forth in the Certificate of Merger.

2.3 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the Corporation Law. Without limiting the generality of the foregoing, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation, all as provided under the Corporation Law.

2.4 Certificate of Incorporation and Bylaws. The Certificate of Incorporation and Bylaws of Merger Sub (the "**Certificate of Incorporation**" and the "**Bylaws**", respectively) shall, by virtue of the Merger, be the certificate of incorporation and bylaws (respectively) of the Surviving Corporation until thereafter amended as permitted by Law and this Agreement.

2.5 Directors and Officers. The following individuals shall be the the directors and officers, respectively, of the Surviving Corporation until their respective death, permanent disability, resignation or removal or until their respective successors are duly elected and qualified:

Name		Title
Tal Hayek	-	Director, President

2.6 Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Merger Sub or the holders of any securities of the Company or Merger Sub, each share of Company Common Stock and Preferred Stock (each, a "**Share**" and collectively the "**Shares**"), issued and outstanding immediately prior to the Effective Time (other than Shares owned by Parent, Merger Sub or any wholly owned Subsidiary (as defined below) of Parent or the Company or held in the treasury of the Company, all of which shall be canceled without any consideration being exchanged therefor, and other than Dissenting Shares (which shall have only those rights set forth in Section 2.11) shall be converted at the Effective Time into the right to receive in cash an amount per Share (subject to any applicable withholding Tax) equal to the Per Share Merger Consideration for such class of Shares calculated pursuant to Article 3, without interest together with any amounts that may become payable in respect of each such Share in the future from the Net Working Capital Adjustment subject to the provisions of this Agreement. At the Effective Time, all such Shares other than Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of such Shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration as provided for herein.

2.7 Existing Equity Awards. At the Effective Time, each option to purchase shares of Company capital stock (an "**Option**") that is outstanding and unexercised immediately prior to the Effective Time, whether or not then vested or exercisable, shall be, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company, the holder of such Option or any other Person, cancelled and each such holder shall cease to have any rights with respect thereto. At or prior to the Effective Time, the Company, the Board of Directors and its compensation committee, as applicable, shall adopt any resolutions and take any actions necessary to effectuate the provisions of this Section 2.7 and cause the Plan to terminate at or prior to the Effective Time. At the Effective Time, each warrant to purchase shares of Company capital stock (an "**Warrant**") that is outstanding and unexercised immediately prior to the Effective Time, whether or not then vested or exercisable, shall be, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company, the holder of such Warrant or any other Person, cancelled and each such holder shall cease to have any rights with respect thereto. At or prior to the Effective Time, the Company, the Board of Directors and its compensation committee, as applicable, shall adopt any resolutions and take any actions necessary to effectuate the provisions of this Section 2.7.

2.8 Conversion of Common Stock of Merger Sub. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of common stock, $0.01 par value per share of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one share of common stock of the Surviving Corporation.

2.9 Withholding Taxes. Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as are required to be withheld and paid over to the applicable Government Entity under the Code, or any applicable provision of state, local or foreign Legal Requirement. To the extent that amounts are so withheld and paid over to the applicable Government Entity, such

withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Shares in respect of which such deduction and withholding was made.

2.10 Subsequent Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to continue, vest, perfect or confirm of record or otherwise the Surviving Corporation's right, title or interest in, to or under any of the rights, properties, privileges, franchises or assets of the Company as a result of, or in connection with, the Merger, or otherwise to carry out the intent of this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the Company or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties, privileges, franchises or assets in the Surviving Corporation or otherwise to carry out the intent of this Agreement.

2.11 Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, Shares that are issued and outstanding immediately prior to the Effective Time and that are held by stockholders of the Company properly exercising appraisal rights available under Section 262 of the Corporation Law (the "**Dissenting Shares**") shall not be converted into or be exchangeable for the right to receive the Merger Consideration, unless and until such holders shall have failed to perfect or shall have effectively withdrawn or lost their rights to appraisal under the Corporation Law. Dissenting Shares shall be treated in accordance with Section 262 of the Corporation Law. If any such holder shall have failed to perfect or shall have effectively withdrawn or lost such right to appraisal, such holder's Shares shall thereupon be converted into and become exchangeable only for the right to receive, as of the later of the Effective Time and the time that such right to appraisal shall have been irrevocably lost, withdrawn or expired, the Merger Consideration, without interest. The Company shall give Parent and Merger Sub (a) prompt notice of any written demands for appraisal of any Shares, attempted withdrawals of such demands and any other instruments served pursuant to the Corporation Law and received by the Company relating to rights to be paid the "fair value" of Dissenting Shares, as provided in Section 262 of the Corporation Law and (b) the opportunity to participate in and control all negotiations and proceedings with respect to demands for appraisal under the Corporation Law. The Company shall not, except with the prior written consent of Parent, voluntarily make or agree to make any payment with respect to any demands for appraisals of capital stock of the Company, offer to settle or settle any such demands or approve any withdrawal of any such demands.

ARTICLE 3
CALCULATION OF MERGER CONSIDERATION; PAYMENT

3.1 Merger Consideration. The aggregate consideration for the Shares (as it may be adjusted in accordance with this Agreement, the "**Merger Consideration**") will be sum of the following (without duplication):

(a) $9,300,000 (the "**Closing Payment**"), and

(b) the Escrow Amount,

(c) less, the amount (if any) by which the Net Working Capital as of the Closing Date is less than the Target Working Capital, or, plus, the amount (if any) by which the Net Working Capital as of the Closing Date exceeds the Target Working Capital, (the adjustments contemplated by this Section 3.1(c), the **"Working Capital Adjustment**"),

(d) less, all outstanding Debt of the Company, which shall be paid in accordance with written instructions from the Stockholder Representative,

(e) less all bonuses, fees and expenses owing by the Company in connection with the transactions contemplated by this Agreement, including, without limitation, those bonuses, fees and expenses listed on Schedule B, which shall be paid in accordance with written instructions from the Stockholder Representative, including through payroll, if applicable (the "**Transaction Expenses**").

Notwithstanding anything else contained in this Agreement, in no event shall the Parent be required to pay more than the sum of (i) the Closing Payment, plus (ii) the Escrow Amount released to the Company Stockholders in accordance with the terms of this Agreement and the Escrow Agreement, as adjusted by the Working Capital Adjustment.

3.2 Calculation of Per Share Merger Consideration. Each holder of Shares issued and outstanding as of the Effective Time shall be entitled to receive payments of Merger Consideration if, as and when payable under this Agreement, calculated as follows (in each case the "**Per Share Merger Consideration**"):

(a) Series A-1 Liquidation Preference. Each holder of Series A-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any Merger Consideration to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or holders of Company Common Stock, by reason of their ownership thereof, an amount per share equal to 1.5 times the Series A-1 Liquidation Preference Price for each Series A-1 Preferred Stock held by such holder as of the Effective Time. If, at the time of any such payment, the cumulative Merger Consideration thus distributed among the holders of the Series A-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, all remaining Merger Consideration, if any, shall be distributed ratably among the holders of the Series A-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive under this Section 3.2(a) until such preferential amounts are satisfied in full.

(b) Other Preferred Liquidation Preference. Upon the completion of the payments of Merger Consideration required by Section 3.2(a), if Merger Consideration remains available for distribution hereunder, prior and in preference to any distribution of Merger Consideration to the holders of Company Common Stock by reason of their ownership thereof:

(i) each holder of Series A Preferred Stock shall be entitled to receive, an amount per share equal to the Series A Liquidation Preference Price for

each share of Series A Preferred Stock held by such holder as of the Effective Time;

(ii) each holder of Series B Preferred Stock shall be entitled to receive, an amount per share equal to the Series B Liquidation Preference Price for each share of Series B Preferred Stock held by such holder as of the Effective Time;

(iii) each holder of Series C Preferred Stock shall be entitled to receive, an amount per share equal to the Series C Liquidation Preference Price for each share of Series C Preferred Stock held by such holder as of the Effective Time;

(iv) each holder of Series D Preferred Stock shall be entitled to receive, an amount per share equal to the Series D Liquidation Preference Price for each share of Series D Preferred Stock held by such holder as of the Effective Time; and

(v) each holder of Series E Preferred Stock shall be entitled to receive, an amount per share equal to the Series E Liquidation Preference Price for each share of Series E Preferred Stock held by such holder as of the Effective Time;

If, at the time of any such payment, the cumulative Merger Consideration distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, all remaining Merger Consideration, if any, shall be distributed ratably among the holders of the Series A Preferred Stock Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive under this Section 3.2(b) until such preferential amounts are satisfied in full.

(c) Company Common Stock. Upon the completion of the distribution required by Sections 3.2(a) and 3.2(b), if Merger Consideration remains available for distribution to holders of Shares of Company Common Stock, the remaining Merger Consideration shall be distributed among the holders of the Company Common Stock pro rata based on the number of shares of Company Common Stock held by each at the Effective Time.

3.3 Payment of the Merger Consideration. The Merger Consideration shall be paid and satisfied as follows:

(a) Prior to the Effective Time, but conditional upon the Closing, Parent Shall, and is hereby irrevocably authorized and directed to, deliver the portion of the Closing Payment (as such amount may have been decreased or increased pursuant to Section 3.4(a)(i)) required to satisfy in full and/or release and terminate (i) all outstanding Debt of the Company, and (ii) all Transaction Expenses, each in accordance with written instructions from the Stockholder Representative. All such payments of Debt and Transaction Expenses will be made pursuant to and

against receipt of payoff letters, Lien releases, invoices or termination agreements delivered to the Parent, each such document in form and substance reasonably satisfactory to the Parent.

(b) At the Closing promptly following the Effective Time (and in no event prior to the payments referred to in Section 3.3(a)), the Parent will deliver any remaining portion of the Closing Payment directly to the Company Stockholders in accordance the terms of this Agreement by wire transfer or delivery of other immediately available funds to designated accounts for each Company Stockholder which shall be provided by the Stockholder Representative in writing to the Parent.

(c) At the Closing, the Escrow Amount shall be deposited with the Escrow Agent and shall be held in accordance with Section 3.5 and the terms of the Escrow Agreement.

3.4 Net Working Capital Adjustment. The Merger Consideration will be subject to adjustment as follows:

(a) Estimated Closing Balance Sheet. Not less than five days prior to the Closing Date, the Company will deliver to Parent an estimated unaudited balance sheet of the Company as of the Closing Date (the "**Estimated Closing Balance Sheet**"), together with its calculation of the estimated Net Working Capital as of the Closing Date and the estimated amount of any Working Capital Adjustment based thereon ("**Estimated Net Working Capital**"). The Estimated Closing Balance Sheet will be prepared substantially in the form of Exhibit 3.4 and in accordance with GAAP. Parent and Stockholder Representative will review the Estimated Closing Balance Sheet together, as well as the estimated Working Capital Adjustment, to ensure that the Estimated Closing Balance Sheet was prepared in accordance with this Section 3.4 and neither it nor the estimated Working Capital Adjustment contains arithmetic errors and is otherwise free of manifest error. Subject to the foregoing: (i) the Closing Payment will be decreased by the amount that the Estimated Net Working Capital is less than the Target Working Capital; and (ii) if the Estimated Net Working Capital exceeds the Target Working Capital, then the Closing Payment will be increased upon the determination of the Final Net Working Capital and shall be paid in accordance with the provisions of Section 3.4(d).

(b) Closing Working Capital Statement. Within 60 days after the Closing Date, the Parent will prepare and deliver to the Stockholder Representative an unaudited balance sheet and statement of income of the Company as of the Closing Date and, based thereon, a statement (the "**Closing Working Capital Statement**") setting forth the Parent's computation of the Net Working Capital as of the Closing Date, the Working Capital Adjustment and identifying with particularity any differences between such calculations and the calculations prepared by the Company for purposes of the Closing on which the Estimated Net Working Capital is based. The Closing Working Capital Statement and the calculations contained therein will be prepared substantially in the form of Exhibit 3.4 and in accordance with GAAP. Following delivery of the Closing Working Capital Statement, the Parent will give the Stockholder Representative reasonable access to the work papers, trial balances and other Company documents used

by the Parent or its Representatives in preparation of the Closing Working Capital Statement.

(c) Review. The Stockholder Representative may object to the Closing Working Capital Statement and the calculations contained therein on any reasonable basis consistent with the provisions of this Agreement. The Stockholder Representative will have 30 days after receiving the Closing Working Capital Statement in which to deliver written notice of objection thereto to the Parent setting forth in reasonable detail the basis of the objections. Failure to object in writing within such 30-day period will constitute the Stockholder Representative's final and binding acceptance of the Closing Working Capital Statement and the Net Working Capital as of the Closing Date as computed by the Parent. The Stockholder Representative and the Parent will attempt in good faith to resolve any disputed objection so raised by the Stockholder Representative with respect to the Closing Working Capital Statement within 30 days after the Parent's receipt of the notice of such objection from the Stockholder Representative, if any. If the Parent and the Stockholder Representative cannot resolve all such objections within such 30-day period, the parties will retain the Accounting Firm to resolve the remaining issues. The Accounting Firm will consider only those items and amounts in the Parent's and the Stockholder Representative's respective determinations of the Net Working Capital that are identified as being items and amounts to which the Parent and the Stockholder Representative have been unable to agree. In resolving any disputed item or amount, the Accounting Firm may not assign a value to any item or amount that is higher than the highest value for each item or amount claimed by either party or lower than the lowest value for such item or amount claimed by either party. The Accounting Firm's determination of the Final Net Working Capital will be based on the definition of "Net Working Capital" contained in this Agreement. The Accounting Firm's fees and expenses will be paid 50% by the Parent and 50% by the Company Stockholders (but, in the case of the portion payable by the Company Stockholders, is limited to set-off from the Escrow Amount). The parties will use their reasonable best efforts to cause the Accounting Firm to make its determination as promptly as possible and in any event within 60 days after the Accounting Firm has been retained, including, without limitation, by promptly complying with all reasonable requests for information, books, records and similar items. Each of the Parent and the Stockholder Representative will be afforded the opportunity to present to the Accounting Firm any materials related to the determination and to discuss the determination with the Accounting Firm. The determination of the Accounting Firm will be, absent manifest error, conclusive and binding on the parties and will be reflected in a Closing Working Capital Statement approved or prepared by such accountants in accordance with Section 3.4.

(d) Adjustment Payment. Upon final determination of the Net Working Capital as of the Closing Date (the "**Final Net Working Capital**"), whether by the Stockholder Representative's failure to object to the Closing Working Capital Statement within the 30 day period provided above, by mutual agreement of the Parent and the Stockholder Representative or by determination of the Accounting Firm, the Merger Consideration will be recalculated using such finally determined amounts in lieu of the Estimated Net Working Capital used in the calculation and payment

of the Closing Merger Consideration (the Closing Merger Consideration as so recalculated is the "**Adjusted Closing Merger Consideration**"):

(i) if the Final Net Working Capital is less than the Estimated Net Working Capital paid at the Closing (the amount by which the Final Net Working Capital is less than the Estimated Net Working Capital shall be referred to herein as the "**Decrease Amount**"), then, the Decrease Amount shall be set-off by the Purchaser against the Escrow Amount held by the Escrow Agent (for the avoidance of doubt, the adjustments provided for in Sections 3.4(a)(i) and 3.4(d)(i) shall collectively reduce the Closing Payment and Escrow Amount by the amount in which the Target Working Capital exceeds the Final Working Capital); or

(ii) if the Final Net Working Capital is greater than the Estimated Net Working Capital as of the Closing Date (the amount by which the Final Net Working Capital exceeds the Estimated Net Working Capital as of the Closing Date is referred to herein as the "**Increase Amount**"), then, within five business days of the final determination of the Final Net Working Capital pursuant to this Section 3.4, the Parent will pay the Increase Amount by wire transfer or delivery of other immediately available funds first, to satisfy additional Transaction Expenses or payment of Debt in accordance with written instructions from the Stockholder Representative, and second, to the Company Stockholders to designated accounts for such Company Stockholders provided by the Stockholder Representative in writing to the Parent in accordance with this Agreement; or

(iii) if the Final Net Working Capital is the same as the Estimated Net Working Capital Consideration paid at the Closing, no payments will be made (and no set-off will be effected) pursuant to this Section 3.4.

(e) Accounts Receivable. In the event that any accounts receivable of the Company that are outstanding on the Closing Date are not collected within 180 days of the Closing Date, then the Parent shall be entitled to set-off such uncollected amounts against the Escrow Amount held by the Escrow Agent.

3.5 Escrow Amount.

(a) The Escrow Amount shall be held by the Escrow Agent as security for the set-off and indemnification obligations of Sellers under Sections 3.4(d)(i), 3.4(e) and 8.2 of this Agreement. The Escrow Amount held by the Escrow Agent shall be subject to any claim by Parent in accordance with Article 8 and the Escrow Agreement.

(b) Without limiting the application of Sections 8.5 or 8.6, in the event Parent desires to make a claim against the Escrow Amount on account of, or with respect to, the set-off and/or indemnification obligations of the Majority Stockholders under Sections 3.4(d)(i), 3.4(e) or 8.2 of this Agreement (an "**Escrow Claim**"), the parties shall comply with the following procedures:

(i) Parent shall notify the Stockholder Representative and the Escrow Agent in writing (a "**Notice of Escrow Claim**"), which notice shall set forth a

description of the Escrow Claim and the amount owed with respect to such Escrow Claim (if known). In the event that the Stockholder Representative disputes that Parent is entitled to be paid the amounts set forth in such Escrow Claim, the Stockholder Representative shall notify Parent and the Escrow Agent of such dispute in writing within thirty (30) days following receipt by the Stockholder Representative of the Notice of Escrow Claim. If no such notice of dispute is received by Parent and Escrow Agent within thirty (30) days after the Stockholder Representative has been provided a Notice of Escrow Claim, such amount specified therein shall be paid out of the Escrow Amount held by the Escrow Agent by the Escrow Agent to Parent.

(ii) In the event that the Stockholder Representative disputes the Escrow Claim and provides Parent and Escrow Agent written notice of such dispute within thirty (30) days following receipt of the Notice of Escrow Claim, the amount set forth in such Escrow Claim may only be paid out of the Escrow Amount by the Escrow Agent to Parent if (x) subsequently agreed by the Stockholder Representative in writing, or (y) directed or permitted by a final decision of a court of competent jurisdiction, which decision has not been appealed within any applicable time periods for such appeal or with respect to which no appeal is available.

(iii) Upon the expiry of the Escrow Period (the "**Release Date**"), Parent and the Majority Stockholders agree and acknowledge that the remaining balance of the Escrow Amount, if any, (less any amounts set forth in any Pending Notice of Claims, which shall continue to be held by the Escrow Agent in accordance with the terms of this Agreement and the Escrow Agreement) shall be released by the Escrow Agent first, to satisfy additional Transaction Expenses or payment of Debt in accordance with written instructions from the Stockholder Representative, and second, to the Company Stockholders (subject to and in accordance with the terms of the Escrow Agreement). Upon final resolution of all Pending Escrow Claims as at the Release Date (which shall be evidenced by the written agreement of Parent and the Stockholder Representative, or the direction by a final decision of a court of competent jurisdiction, which decision has not been appealed within any applicable time periods for such appeal or with respect to which no appeal is available), the Escrow Agent shall pay the remaining balance, if any, of the Escrow Amount, first, to satisfy additional Transaction Expenses or payment of Debt in accordance with written instructions from the Stockholder Representative, and second, to the Company Stockholders.

3.6 Treatment of Payments. Any payment or set-offs made pursuant to Section 3.5 of this Agreement will be treated as an adjustment to the Merger Consideration for all purposes and the parties will file their respective Tax Returns accordingly.

3.7 Additional Payment Mechanics. Stockholder Representative will act as paying agent for all payments of Merger Consideration hereunder.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise set forth in the Disclosure Schedule, the Company represents and warrants to the Parent as follows and acknowledges that the Parent is relying on such representations and warranties in connection with the transactions contemplated in this Agreement:

4.1 Organization and Power; Authority; Board Approval.

(a) Each of the Company and its subsidiaries is a corporation, duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its formation. The Company and each of its subsidiaries are duly authorized to conduct business and are in good standing under the laws of each jurisdiction where such qualification is required, which jurisdictions are set forth in Section 4.1(a) of the Disclosure Schedule, except in the event the failure to so qualify would not have a Material Adverse Effect. The Company and each of its subsidiaries has the corporate power to carry on the businesses in which it is engaged and to own and use the properties owned and used by it.

(b) The Company has full corporate power and authority to enter into and perform its obligations under this Agreement and, subject to, in the case of the consummation of the Merger, adoption of this Agreement by the affirmative vote or consent of Company Stockholders representing (x) at least 68% of the then outstanding Preferred Stock, voting together as a single class and on an-as converted basis and (y) a majority of the outstanding Shares entitled to vote thereon, voting together as a single class and on an-as converted basis (collectively the "**Requisite Company Vote**"), to consummate the transactions contemplated hereby. The execution, delivery and performance by the Company of this Agreement and each Transaction Document to which it is a party and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby, subject only, in the case of consummation of the Merger, to the receipt of the Requisite Company Vote. The Requisite Company Vote is the only vote or consent of the holders of any class or series of the Company's capital stock required to approve and adopt this Agreement, approve the Merger and consummate the Merger and the other transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company, and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(c) The Board, by resolutions duly adopted by unanimous vote at a meeting of all directors of the Company duly called and held and, as of the date hereof, not subsequently rescinded or modified in any way, or via unanimous written consent in lieu of a meeting, has, as of the date hereof (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Company Stockholders, (ii) approved and declared advisable the "agreement of merger" (as such term is used in Section 251 of the Corporation Law) contained in this Agreement and the transactions contemplated

by this Agreement, including the Merger, in accordance with the Corporation Law, (iii) directed that the "agreement of merger" contained in this Agreement be submitted to the Company Stockholders for adoption, and (iv) resolved to recommend that the Stockholders adopt the "agreement of merger" set forth in this Agreement (collectively, the "**Company Board Recommendation**") and directed that such matter be submitted for consideration of the Company Stockholders.

4.2 Binding Effect and Non-Contravention. Neither the execution, delivery nor performance by the Company of the Transaction Documents to which it is a party (i) violates (A) any Legal Requirement to which it is subject or (B) any provision of the Company's Articles of Incorporation, Bylaws or other incorporation documents or any similar documents of the Company, (ii) in any material respect conflicts with, results in a breach of, constitutes a default under, results in the acceleration of, creates in any party the right to accelerate, terminate, modify, or cancel, or except as disclosed on Section 4.2 of the Disclosure Schedule, requires any notice, under any material agreement, contract, lease, license, instrument, or other arrangement to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which the Company's assets or any of its subsidiaries assets are subject, (iii) results in the creation of any Lien on any assets of the Company or any of its subsidiaries, or (iv) except for adoption of this agreement of merger (as defined in section 251 of the Corporation Law) and approving the Merger by the Requisite Company Vote, the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and as listed in Section 4.2 of the Disclosure Schedule, requires any authorization, consent, approval or notice by or to any Person.

4.3 Brokers. Except as disclosed on Section 4.3 of the Disclosure Schedule, neither the Company nor any of its subsidiaries has retained any broker in connection with the transactions contemplated by this Agreement. Subject to the terms of Section 10.3, but except as disclosed on Section 4.3 of the Disclosure Schedule, neither the Company nor its subsidiaries nor the Parent will have any obligation to pay any broker's, finder's, investment banker's, financial advisor's or similar fee in connection with this Agreement or the transactions contemplated by this Agreement by reason of any action taken by or on behalf of the Company or any of its subsidiaries.

4.4 Capitalization.

(a) The total number of shares which the Corporation is authorized to issue is (i) 90,000,000 shares of Company Common Stock, $0.01 par value per share, and (ii) 44,197,173 shares of Preferred Stock, $0.001 par value per share, of which 7,378,985 shares have been designated "Series A Preferred Stock," 7,491,703 shares have been designated "Series B Preferred Stock," 6,186,440 shares have been designated "Series C Preferred Stock", 4,659,917 shares have been designated as "Series D Preferred Stock," 4,504,023 shares have been designated as "Series E Preferred Stock," and 13,976,105 shares have been designated "Series A-1 Preferred Stock." As of the date hereof, the following numbers of Shares are issued and outstanding: 7,378,985 shares of Series A Preferred Stock; 7,475,092 shares of Series B Preferred Stock; 6,186,440 shares of Series C Preferred Stock; 4,659,917 shares of Series D Preferred Stock; 4,484,522 shares of Series E Preferred Stock; 13,967,832 shares of Series A-1 Preferred Stock; and 10,087,167 shares of Common Stock.

(b) 4.4(b) of the Disclosure Schedules set forth, as of the date hereof, (i) the name of each Person that is the registered owner of any Shares and the number of Shares owned by such Person, and (ii) a list of all holders of outstanding Options, including the number of Shares subject to each such Option, the grant date, exercise price and vesting schedule for such Option, the extent to which such Option is vested and exercisable and the date on which such Option expires. Each Option was granted in compliance with all applicable Legal Requirements and all of the terms and conditions of the Plan pursuant to which it was issued. Each Option was granted with an exercise price per share equal to or greater than the fair market value of the underlying shares on the date of grant and has a grant date identical to the date on which the Board or compensation committee actually awarded the Option. Each Option qualifies for the tax and accounting treatment afforded to such Option in the Company's tax returns and the Company's financial statements, respectively, and does not trigger any liability for the holder of Options under Section 409A of the Code. The Company has heretofore provided or made available to Parent (or Parent's Representatives) true and complete copies of the standard form of option agreement and any stock option agreements that differ from such standard form.

(c) Except for currently outstanding Options to purchase 9,123,444 shares of Company Common Stock which have been granted to employees, consultants or directors pursuant to the Plan, and a reservation of an additional 3,861,916 shares of Company Common Stock for direct issuances or purchase upon exercise of Options to be granted in the future, under the Plan, along with currently outstanding Warrants to purchase 36,112 shares of Company Preferred Stock and the convertible notes disclosed on Schedule 4.4(c), (i) no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company is authorized or outstanding, and (ii) there is no commitment by the Company to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of the Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right. There are no declared or accrued unpaid dividends with respect to any Shares.

(d) All issued and outstanding Shares are, and all Shares which may be issued pursuant to the exercise of Options, when issued in accordance with the applicable security, will be (i) duly authorized, validly issued, fully paid and non-assessable; (ii) not subject to any preemptive rights created by statute, the Company Certificate of Incorporation or Bylaws or any agreement to which the Company is a party; and (iii) free of any encumbrances in respect thereof. All issued and outstanding shares of Company Common Stock, Company Preferred Stock and Options were issued in compliance with applicable Legal Requirements.

(e) No outstanding Shares are subject to vesting or forfeiture rights or repurchase by the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to the Company or any of its securities.

(f) All distributions, dividends, repurchases and redemptions of the capital stock (or other equity interests) of the Company were undertaken in compliance with the Company Certificate of Incorporation and Bylaws then in effect, any agreement to which the Company then was a party and in compliance with applicable Legal Requirements.

4.5 Subsidiaries. Except as disclosed on Section 4.5 of the Disclosure Schedule, the Company does not currently have, nor has had in the past, any investment, equity or ownership interest (whether controlling or not) of any kind in any other Person. The Company is not engaged in any joint venture or partnership with any other Person. The Company is the holder of all of the issued and outstanding shares in the capital of each of the subsidiaries listed in Section 4.5 of the Disclosure Schedule and all of such shares have been duly authorized and validly issued and are outstanding as fully paid and non assessable shares.

4.6 Financial Statements. The Company has delivered the following Company financial statements to the Parent (collectively, the "**Financial Statements**"): (a) an audited balance sheet and related statements of income, changes in stockholders' equity, and cash flows as of and for the fiscal years ended December 31, 2015, 2014, 2013 and 2012, and (b) an unaudited balance sheet and related statements of income, changes in stockholders' equity, and cash flows as of and for the fiscal year ended December 31, 2016 (the 2016 balance sheet being the "**Latest Balance Sheet**"). The Financial Statements have been prepared in accordance with GAAP on a consistent basis throughout the periods covered thereby and present fairly, in all material respects, the financial condition of the Company and its subsidiaries as of such dates and the results of operations and cash flows for the periods specified; provided, that the Financial Statements described in Section 4.6(b) are subject to normal year-end adjustments (the effect of which will not, individually or in the aggregate, be material) and absence of footnotes and other presentation items (that, if presented, would not differ materially from those included in the balance sheet as of December 31, 2016. Set forth in Section 4.6 of the Disclosure Schedule is a list of all Debt of the Company and its subsidiaries as of the date hereof.

4.7 Subsequent Events. Since January 1, 2017, except as disclosed on Section 4.7 of the Disclosure Schedule,:

(a) there has been no event or occurrence which has had a Material Adverse Effect;

(b) each of the Company and its subsidiaries has conducted the Business in all material respects only in the ordinary course of business; and

(c) neither the Company nor any of its subsidiaries has:

(i) sold, assigned, transferred, leased or licensed any material assets except for fair consideration in the ordinary course of business;

(ii) entered into any agreement, contract, lease or license either involving more than $75,000 or outside the ordinary course of business;

(iii) accelerated, terminated, modified, or cancelled any agreement, contract, lease or license either involving more than $75,000 or outside the ordinary course of business (or had any other party thereto take such action);

(iv) incurred any Debt, imposed or granted any Lien on any of its assets or had any of its assets become subject to any Lien;

(v) made any capital expenditures or commitments therefor either involving more than $75,000 (in the aggregate) or outside the ordinary course of business;

(vi) made any capital investment in, any loan to, or any acquisition of the securities or other assets of, any Person;

(vii) delayed or postponed in any material respect the payment of accounts payable or other Liabilities outside the ordinary course of business;

(viii) cancelled, compromised, waived, or released any right or claim either involving more than $75,000 (individually or in the aggregate) or outside the ordinary course of business;

(ix) sold, assigned, transferred, or licensed any Intellectual Property, other than on a non-exclusive basis in the ordinary course of business;

(x) issued, sold or transferred any of its capital stock, securities convertible into its capital stock or warrants, options or other rights to acquire its capital stock, or any bonds or debt securities;

(xi) declared or made any payment or distribution of cash or other property to shareholders with respect to its capital stock, or purchased or redeemed any capital stock;

(xii) experienced any material damage, destruction or loss to its assets (whether or not covered by insurance);

(xiii) made any material changes in any employee compensation, benefits, severance or termination agreement other than routine salary increases in the ordinary course of business consistent with past practices;

(xiv) received any notice or other indication from any customer (whether formal or informal) with respect to any warranty claims, termination of contracts or work orders, or disputes as to amounts billed in excess of $75,000; or

(xv) agreed to do any of the foregoing.

4.8 Title to Assets. Except as disclosed on Section 4.8 of the Disclosure Schedule, the Company and each of its subsidiaries has good and marketable title to, or a valid leasehold interest in, the material assets used in or necessary to the conduct of the Business, reflected on the Latest Balance Sheet, or acquired since the date thereof, free and clear of all Liens, except for assets disposed of in the ordinary course of business since the date of the Latest Balance Sheet.

4.9 Compliance With Laws. The Company and each of its subsidiaries is in compliance in all material respects with all applicable Legal Requirements, and, except as set forth on

Section 4.9 of the Disclosure Schedule, none of them has received any notice or other written communication alleging any failure to so comply.

4.10 Undisclosed Liabilities. Neither the Company nor any of its subsidiaries has any material Liabilities except for (a) Liabilities set forth on the face of the Latest Balance Sheet, (b) Liabilities which have arisen after the date thereof in the ordinary course of business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of any Legal Requirement) and (c) those listed on Schedule 4.10. The Company has made payment of $[Amount Redacted] to Plaintiff's Counsel (as such term is defined in the Settlement Agreement) in accordance with the terms of the Settlement Agreement and has no further Liabilities thereunder arising from the transaction contemplated hereby or otherwise.

4.11 Tax Matters. Except as disclosed on Section 4.11 of the Disclosure Schedule:

(a) All Tax Returns required to be filed by or on behalf of the Company and its subsidiaries have been duly and timely filed. All such Tax Returns are true, correct and complete in all material respects and were prepared in compliance with all material Legal Requirements. All Taxes due and owing by the Company and each of its subsidiaries reflected thereon have been paid in full. All Taxes of the Company and its subsidiaries that are not yet due have been properly accrued and appear on the Financial Statements, including the Latest Balance Sheet, in accordance with GAAP. Neither the Company nor any of its subsidiaries has Tax Liabilities (whether due or to become due) except for Tax Liabilities (i) reflected on the Latest Balance Sheet, or (ii) that have arisen after the date of the Latest Balance Sheet in the ordinary course of business and in a manner and at a level consistent with prior periods. Neither the Company nor any of its subsidiaries is currently the beneficiary of any extension of time within which to file any Tax Return. Neither the Company nor any of its subsidiaries has or will be subject to the accumulated earnings Tax contained in Sections 531 and 532 of the Code for periods ending on or before the Closing Date.

(b) The Company and each of its subsidiaries has complied in all material respects with all applicable Legal Requirements relating to the collection, withholding and payment of Taxes and has paid over to the proper Government Entity all amounts required to be so paid over, including Taxes required to be withheld and paid in connection with amounts paid or owing to (i) employees, agents, independent contractors, creditors, members, stockholders, partners or other third parties; (ii) non-resident alien individuals, foreign corporations, foreign partnerships, foreign trusts, or foreign estates; and (iii) sales or use Taxes.

(c) No audits or administrative or judicial Tax proceedings are pending or being conducted with respect to the Company or any of its subsidiaries and, to the Company's Knowledge, no basis exists therefor. Neither the Company nor any of its subsidiaries has received from any Government Entity any (i) written notice indicating an intent to open an audit or other review, (ii) request for additional information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any Tax. Neither the Company nor any of its subsidiaries has waived or extended any statute of limitations in respect of Taxes or agreed to the extension of time with respect to a Tax assessment or deficiency. Neither the Company nor any of its subsidiaries has entered into a closing agreement

pursuant to Section 7121 of the Code or corresponding provision of state, local or foreign Tax law.

(d) Neither the Company nor any of its subsidiaries has or had a taxable presence in any jurisdiction other than jurisdictions for which Tax Returns have been duly filed, and Taxes have been duly paid, and neither the Company nor any subsidiary has received any written claim from a Government Entity in a jurisdiction where the Company or such subsidiary does not file Tax Returns and pay Taxes that the Company or any subsidiary is or may be subject to any Tax Return filing requirements or subject to taxation by that jurisdiction.

(e) The Company has delivered, or made available to the Parent by posting to the electronic data room established in connection with the transactions contemplated by this Agreement, true, correct and complete copies of (i) all Tax Returns of the Company and its subsidiaries for taxable periods beginning after December 31, 2012, and (ii) all private letter rulings, revenue agent reports, information requests, notices of proposed deficiencies, deficiency notices, protests, petitions, closing agreements, settlement agreements, pending ruling requests, and any similar documents, submitted by, received by or agreed by or on behalf of the Company or its subsidiaries for all taxable periods for which the statute of limitations has not expired, and (iii) a complete and correct list of the jurisdictions in which Tax Returns are required to be filed by the Company or any of its subsidiaries.

(f) Neither the Company nor any of its subsidiaries is a party to any agreement, contract, arrangement or plan that has resulted or would result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax law).

(g) Neither the Company nor any of its subsidiaries is a party to or bound by any Tax allocation, sharing, indemnification or similar agreement or arrangement. Neither the Company nor any of its subsidiaries is or has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which is the Company). Neither the Company nor any of its subsidiaries has Liability for the Taxes of any Person under Treasury Regulation Section §1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise (other than, with respect to the Company, any subsidiary of the Company). Neither the Company nor any of its subsidiaries is a party to, or owns any interest in, any joint venture, partnership or other arrangement or contract that could be treated as a partnership for federal, state or local income Tax purposes.

(h) None of the shares of capital stock of the Company or any of its subsidiaries are subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code.

(i) Neither the Company nor any of its subsidiaries is, nor have any of them been, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code during the period specified in Section 897(c)(1)(A)(ii) of the Code.

(j) Neither the Company nor any of its subsidiaries will be required to include any item of income in, 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) intercompany transaction or excess loss account described in United States Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law), (ii) instalment sale or open transaction disposition transaction made on or prior to the Closing Date, (iii) prepaid amount received on or prior to the Closing Date, (iv) election under Section 108(i) of the Code, (v) change in method of accounting for a taxable period ending on or prior to the Closing Date, or (vi) use of an improper method of accounting for a taxable period ending on or prior to the Closing, and no Tax authority has proposed in writing any adjustment pursuant to Section 481(a) (or any similar provision of state, local or foreign Tax law) or change in accounting method.

(k) There are no Liens for Taxes (other than for Taxes not yet due) on any of the assets of the Company or any of its subsidiaries.

(l) Neither the Company nor any of its subsidiaries has distributed the shares of another Person, nor have any of them had its shares distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(m) Neither the Company nor any of its subsidiaries has been a party to any "reportable transaction" as defined in Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b). The Company and each of its subsidiaries has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal Income Tax within the meaning of Section 6662 of the Code.

(n) Neither the Company nor any of its subsidiaries have a request for a private letter ruling, a request for technical advice, a request for a change of any method of accounting, or any other similar request that is in progress or pending with any Government Entity with respect to Taxes. Neither the Company nor any of its subsidiaries has executed any power of attorney with respect to any Tax or Tax Return, other than powers of attorney that are not longer in force.

(o) Nothing in this Section 4.11 or otherwise in this Agreement shall be construed as a representation or warranty with respect to (i) the amount or availability of any net operating loss, capital loss, Tax credits, Tax basis or other Tax asset or attribute of the Company or any of its subsidiaries in any taxable period (or portion thereof) beginning after the Closing Date or (ii) any Tax position that Parent or its Affiliates (including the Company and its subsidiaries after the Closing) may take in respect of any taxable period (or portion thereof) beginning after the Closing Date.

4.12 Environmental Matters.

(a) The Company and each of its subsidiaries has complied in all material respects with all applicable Environmental Laws, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand or notice has been filed or

commenced, or to the Company's Knowledge, threatened, against the Company or its subsidiaries alleging any failure to so comply. The Company and its subsidiaries have complied in all material respects with all permits, licenses and other authorizations required pursuant to Environmental Laws for the occupation of the Leased Real Property and the operation of the Business; and all such current permits, licenses and other authorization are set forth in Section 4.12(a) of the Disclosure Schedule. Neither the Company nor any of its subsidiaries has received any notice of any actual or alleged violations or Liabilities, including any investigatory, remedial or corrective obligations, arising under Environmental Laws. Neither the Company nor any of its subsidiaries has assumed or otherwise become subject to any Liability, including any investigatory, remedial or corrective obligations, of any other Person arising under Environmental Laws. The Company has provided the Parent with all environmental audits, reports, studies, correspondence and other material environmental documents relating to the Company and each of its subsidiaries' past or current properties, facilities and operations.

(b) None of the following exists or existed at any of the Company or its subsidiaries' past or present properties or facilities: (i) underground storage tanks, (ii) asbestos-containing material in any form or condition, (iii) materials or equipment containing polychlorinated biphenyls, or (iv) landfills, surface impoundments, septic tanks, leach fields or disposal areas.

(c) Neither the Company nor any of its subsidiaries has generated, recycled, treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, manufactured, distributed, or released any substance, including without limitation any Hazardous Substance, or owned or operated any property or facility (and no such property or facility is contaminated by any such substance) so as to give rise to any current or future Liabilities, including any Liability for fines, penalties, response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney's fees, pursuant to CERCLA, the Solid Waste Disposal Act, as amended, or any other Environmental Law.

(d) No facts, events or conditions relating to the past or present facilities, properties or operations of the Company or its subsidiaries would reasonably be expected to (i) prevent, hinder or limit continued compliance with Environmental Laws, (ii) give rise to any investigatory, remedial or corrective obligations pursuant to Environmental Laws, or (iii) give rise to any other Liabilities pursuant to Environmental Laws, including, without limitation, any relating to on-site or off-site releases or threatened releases of Hazardous Substances, personal injury, property damage or natural resources damage.

4.13 Intellectual Property.

(a) Section 4.13(a) of the Disclosure Schedule sets forth a complete and correct list of all of the following that are owned, used or held for use by the Company or any of its subsidiaries in the operation of the Business as presently conducted (including as conducted up until the Closing) and as presently proposed to be conducted: (i) all patented or registered Intellectual Property, including Internet domain name registrations; (ii) all pending patent applications or other applications for registration of Intellectual Property; (iii) all trade or corporate

names and all material unregistered trademarks and service marks; and (iv) all computer software owned by the Company or any of its subsidiaries from which it has derived within the three (3) years preceding the date hereof, is currently deriving or is scheduled to derive, revenue, including from the sale, license, maintenance, hosting, support, distribution or use thereof ("**Company Software**"), identifying for each item all major releases.

(b) Section 4.13(b) of the Disclosure Schedule sets forth a current, complete and correct list of all Intellectual Property licensed to the Company or any of its subsidiaries under the Intellectual Property Agreements ("**Licensed Intellectual Property**") and (i) used in the conduct of the Business, (ii) used in the development, maintenance, use or support of any Company Software, or (iii) incorporated in or distributed or licensed with any Company Software in any manner for use in connection with the Company Software, in each case except for non-customized, off-the-shelf software that is commercially available pursuant to shrinkwrap, click-through or other standard form agreements, and for each identified item of Licensed Intellectual Property, the Intellectual Property Agreement relating to the Company's use of such Licensed Intellectual Property.

(c) The Intellectual Property listed in Section 4.13(a) of the Disclosure Schedule together with the Licensed Intellectual Property licensed constitute all Intellectual Property used in or necessary for the operation of the Business as currently conducted (including as conducted up until the Closing) and as presently proposed to be conducted. The Company or one of its subsidiaries solely and exclusively owns and possesses all right, title and interest in and to the Owned Intellectual Property, and has a valid and enforceable right to use the Licensed Intellectual Property, in each case, free and clear of all Liens. Neither the Company nor any of its subsidiaries is under any obligation, whether written or otherwise, to develop any Intellectual Property (including any Company Software) for any third party (including any customer or end user).

(d) Neither the Company nor any of its subsidiaries has: (i) infringed, diluted, misappropriated or otherwise violated, and the operation of the Business as currently conducted does not infringe, dilute, misappropriate or otherwise violate, any Intellectual Property of any other Person; (ii) received any notices regarding any of the foregoing and is not otherwise aware of any facts which indicate a likelihood of any of the foregoing (including any demands or unsolicited offers to license any Intellectual Property from any other Person or any requests for indemnification from any other Person); or (iii) requested or received any opinions of counsel related to any of the foregoing.

(e) To the Company's Knowledge, no third party has infringed, diluted, misappropriated or otherwise violated any Owned Intellectual Property or any Intellectual Property exclusively licensed to the Company or any subsidiary for use in the Business and the Company is not aware of any facts that indicate a likelihood of any of the foregoing.

(f) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, payment of any additional amounts with respect to, or require

the consent of any other Person in respect of, the Company's right to own or use any Company Intellectual Property.

(g) Except as set forth in Section 4.13(g) of the Disclosure Schedule, (i) no loss or expiration of any of the Owned Intellectual Property is threatened, pending or reasonably foreseeable; (ii) all of the Owned Intellectual Property is valid, subsisting and enforceable; (iii) no claim by any third party contesting the validity, enforceability, use or ownership of any of the Company Intellectual Property has been made, is currently outstanding or is threatened, and there are no grounds for the same; (iv) the Company and its subsidiaries have taken all actions reasonably necessary to maintain and protect all of the Owned Intellectual Property, including the secrecy, confidentiality and value of trade secrets and other confidential information, and will continue to maintain and protect all of the Owned Intellectual Property prior to the Closing so as not to adversely affect the validity or enforceability thereof; (v) the Company and each of its subsidiaries has entered into written confidentiality agreements with all third parties (including all of the Company's and its subsidiaries current and former employees and independent contractors) who have had access to confidential Company Intellectual Property acknowledging and protecting the confidentiality of any confidential Company Intellectual Property and any proprietary information and trade secrets of third parties which the Company or its subsidiaries are required to keep confidential; and (vi) neither the Company nor any of its subsidiaries is subject to any obligations that restrict its ability to compete or otherwise operate its Business or that restricts and/or conditions in any manner the use, transfer or licensing of any Company Intellectual Property or which would reasonably be expected to materially adversely affect the validity, use or enforceability of any Company Intellectual Property.

(h) There are no legal actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending, or, to the Company's Knowledge, threatened (including in the form of offers to obtain a license), (i) alleging any infringement, misappropriation, or other violation by the Company or any of its subsidiaries of the Intellectual Property of any Person; or (ii) by the Company or any of its subsidiaries or, to the Company's Knowledge, by the owner of any Intellectual Property used in the conduct of the Business, alleging any infringement, misappropriation, or other violation by any Person of the Owned Intellectual Property. To the Company's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such legal action.

(i) Except as set forth in Section 4.13(g) of the Disclosure Schedule, no open source, public source or freeware software is used with or integrated into any Company Software in contravention of any applicable license thereto. There are no defects in any of the Company Software that would prevent the same from performing in accordance with its specifications and there are no viruses, worms, Trojan horses or similar disabling codes or programs in any of the Company Software. The Company is in possession of the source code and object code for all Company Software and copies of all other material related thereto, including installation and user documentation, engineering specifications, flow charts, and know-how reasonably necessary for the use, maintenance, enhancement, development and other exploitation of such software. Neither the Company nor

any of its subsidiaries has disclosed, delivered, licensed or otherwise made available, and is not subject to any obligation that would require it to disclose, deliver, license or otherwise provide to any Person the source code of any Company Software.

(j) The Company and each of its subsidiaries has entered into binding, valid and enforceable, written contracts with each current and former employee and independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Owned Intellectual Property during the course of employment or engagement with the Company or such subsidiary whereby such employee or independent contractor (i) acknowledges the Company's or subsidiary's exclusive ownership of all Intellectual Property invented, created, or developed by such employee or independent contractor within the scope of his or her employment or engagement with the Company or a subsidiary; (ii) grants to the Company or a subsidiary of the company a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property; and (iii) irrevocably waives any right or interest, including any moral rights, regarding any such Intellectual Property, to the extent permitted by applicable Legal Requirements.

(k) The Company and its subsidiaries and the conduct of the Business are in material compliance with, and have been in material compliance with all Data Security Requirements. No notices have been received by the Company or any subsidiary from, and neither the Company nor any subsidiary has received written claims, charges or complaints from, any Government Entity or other Person alleging a violation of any Data Security Requirements except as set forth on Section 4.13(k) of the Disclosure Schedule. To the Company's Knowledge, there have not been any actual or alleged incidents of data security breaches, unauthorized access or use of any of the Business Systems, or unauthorized acquisition, destruction, damage, disclosure, loss, corruption, alteration, or use of any Business Data except as set forth on Section 4.13(k) of the Disclosure Schedule.

(l) The Business Systems are sufficient, in all material respects, for the current needs of the Business and have not suffered a material failure in the past twelve (12) months. The Company has purchased and paid in full for a sufficient number of licenses for the operation of the Business Systems. The Company and each of its subsidiaries has taken commercially reasonable actions to protect the security and integrity of the Business Systems and the data stored or contained therein or transmitted thereby including implementing and maintaining: (a) procedures designed to prevent unauthorized access and (b) disaster recovery procedures.

4.14 Real Estate.

(a) Neither the Company nor any of its subsidiaries owns any real property. Section 4.14(a) of the Disclosure Schedule contains the legal address of each parcel of real property leased by the Company or any of its subsidiaries (the "**Leased Real Property**"). The Leased Real Property comprises all of the real property used in or otherwise related to the Business and is suitable for the purposes for which it is presently used. Set forth in Section 4.14(a) of the Disclosure Schedule is a list

of each lease (whether written or oral) pursuant to which the Company or any of its subsidiaries leases the Leased Real Property (the "**Real Property Leases**"). The Company has provided to Parent a true, correct and complete copy of each such lease.

(b) The Company or one of its subsidiaries has a valid leasehold interest in the Leased Real Property. Each Real Property Lease is a legal, valid and binding obligation of the parties thereto, enforceable against them in accordance with its terms except as such enforceability may be limited by (i) applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (ii) applicable equitable principles (whether considered in a proceeding at law or in equity). No party is in violation or breach of or default under any Real Property Lease. The transactions contemplated by this Agreement do not require the consent of any party to any Real Property Lease, except as set forth on Section 4.2 of the Disclosure Schedule, will not result in a violation or breach of or default under any Real Property Lease, and will not otherwise cause any Real Property Lease to cease to be legal, binding, enforceable and in full force and effect on the same terms following the Closing.

(c) There are no leases, subleases, licenses, concessions, or other agreements, written or oral, affecting any part of the Leased Real Property other than the Real Property Leases. There are no parties in possession of any portion of the Leased Real Property except as disclosed in Section 4.14(a) of the Disclosure Schedule. No lessee has prepaid rent for more than the current month, has received or is entitled to a rent concession, allowance, or rebate in connection with its tenancy, or is entitled any work (not yet performed) or consideration (not yet given) in connection with its tenancy. No lessee has any option or other right to renew its lease or purchase the Leased Real Property or any interest therein. Neither the Company nor any of its subsidiaries owes any brokerage commissions with respect to any of the Leased Real Property.

(d) The Leased Real Property is in good condition and repair and sufficient for the operation of the Company and its subsidiaries and the Business.

(e) To the Company's Knowledge, the Leased Real Property complies with all applicable Legal Requirements.

(f) To the Company's Knowledge, there are no permits, licenses or consents required by any Government Entity in connection with the use and occupancy of the Leased Real Property by the Company or any of its subsidiaries except those included in the Permits.

4.15 Litigation. Section 4.15 of the Disclosure Schedule (a) sets forth a list describing all outstanding injunctions, judgments, orders, decrees, rulings, or charges related to the Company or any of its subsidiaries, (b) sets forth a list describing all Actions to which the Company or any of its subsidiaries is a party or, to the Company's Knowledge, threatened to be made a party, and (c) indicates if any of such matters would reasonably be expected to subject the Company or any of its subsidiaries to Liabilities in excess of $75,000. To the Company's Knowledge, except as disclosed on Section 4.15 of the Disclosure Schedule, there is no basis for any action, suit, proceeding, hearing, investigation, arbitration, or other legal or administrative proceeding to be brought against the Company or any of its subsidiaries.

4.16 Employee Benefits.

(a) Section 4.16 of the Disclosure Schedule lists each Employee Benefit Plan that the Company or any of its subsidiaries maintains, to which the Company or any of its subsidiaries contributes or has any obligation to contribute, or with respect to which the Company or any of its subsidiaries has any Liability. Except as disclosed on Section 4.16 of the Disclosure Schedule:

(i) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan, the terms of any applicable collective bargaining agreement and all Legal Requirements, in each case in all material respects.

(ii) All required reports and descriptions (including annual reports (IRS Form 5500), summary annual reports, and summary plan descriptions) have been filed and/or distributed in accordance with the applicable requirements of ERISA and the Code with respect to each such Employee Benefit Plan. The requirements of COBRA have been met with respect to each such Employee Benefit Plan which is an "employee welfare benefit plan" (as such term is defined in Section 3(1) of ERISA) subject to COBRA.

(iii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each such Employee Benefit Plan that is an "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) and all contributions for any period ending on or before the Closing Date which are not yet due have been made to each such employee pension benefit plan or accrued in accordance with GAAP. All premiums, other payments or accruals for incurred but not reported Liability for all periods ending on or before the Closing Date have been paid or accrued consistent with GAAP with respect to each such Employee Benefit Plan that is an employee welfare benefit plan.

(iv) Each such Employee Benefit Plan which is intended to meet the requirements of a "qualified plan" under Section 401(a) of the Code has received or is eligible to rely upon a determination or opinion letter from the Internal Revenue Service that such Employee Benefit Plan is so qualified, and, to the Company's Knowledge, nothing has occurred since the date of such determination that could adversely affect the qualified status of any such Employee Benefit Plan. Each such Employee Benefit Plan has been timely amended to reflect the provisions of any and all Legal Requirements in effect for any period prior to or as of the Closing other than amendments for which the remedial amendment period under Section 401(b) of the Code (including, if applicable, any extension of the remedial amendment period) has not expired, and there are no plan document failures, operational failures, demographic failures or employee eligibility failures which have not been corrected within the meaning of

Rev. Proc. 2013-12, including any subsequent revenue procedure, with respect to any such Employee Benefit Plan.

(v) There have been no non-exempt "prohibited transactions" (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any such Employee Benefit Plan that would reasonably be expected to result in material liability to the Company or any of its subsidiaries. Neither the Company nor any of its subsidiaries have any Liability for breach of fiduciary duty in connection with the administration or investment of the assets of any such Employee Benefit Plan. No action, suit, proceeding, hearing, or investigation with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or, to the Company's Knowledge, threatened. To the Company's Knowledge, there is no reasonable basis for any such action, suit, proceeding, hearing, or investigation.

(vi) The Company has made available to the Parent correct and complete copies of the plan documents (including all amendments) and, in the case of unwritten Employee Benefit Plans, written descriptions thereof, summary plan descriptions, any other communications provided to participants regarding each such Employee Benefit Plan, the most recent determination letter received from the Internal Revenue Service, the three most recent annual reports (IRS Form 5500, with all applicable attachments), and all related trust agreements, insurance contracts, material service or other agreements and the most recent compliance testing information and other funding arrangements related to each such Employee Benefit Plan (in each case, as applicable to such Employee Benefit Plan).

(vii) No such Employee Benefit Plan that provides benefits to any service provider to the Company or any of its subsidiaries constitutes a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code and applicable regulations (including IRS Notice 2005-1)) that does not comply with Section 409A of the Code and the regulations thereunder in all material respects.

(b) Neither the Company nor any of its subsidiaries maintain, contribute to, have any obligation to contribute to, or have any Liability (or has ever done or had any of the foregoing) under or with respect to any "defined benefit plan" (as defined in Section (3)(35) of ERISA), any "multiemployer plan" (as defined in Section (3)(37) or 4001(a)(3) of ERISA), any "multiple employer plan" (as defined in Section 413(c) or the Code), any "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA, any plan subject to Section 412 of the Code or any self-insured employee welfare benefit plan. Neither the Company nor any of its subsidiaries has ever maintained or contributed to a plan subject to Section 412 of the Code.

(c) Neither the Company nor any of its subsidiaries maintain, contribute to or have any obligation to contribute to, or have any Liability with respect to, any employee welfare benefit plan providing medical, health, or life insurance or other welfare-

type benefits for current or future retired or terminated directors, officers or employees of the Company or any of its subsidiaries (or any spouse or other dependent thereof) other than as required by COBRA or similar state or local law.

(d) Except as set forth on Schedule B, the consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee, officer or director of the Company or any of its subsidiaries or any Majority Stockholder to severance pay, unemployment compensation, or any other payment, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation otherwise due any such individual. Each Employee Benefit Plan, including any related service or investment contract, may be amended or terminated without material penalty.

(e) Neither the Company nor any of its subsidiaries has any Liability, including any obligations under any Employee Benefit Plan, with respect to any misclassification of a Person as an independent contractor rather than as an employee or with respect to any employees "leased" from another entity. No Person (including any leased employees (as defined in Section 414(n) of the Code) or independent contractors of the Company or any subsidiary) other than employees of the Company or any subsidiary is permitted to participate or participates in the Employee Benefit Plans.

(f) Any Employee Benefit Plan terminated has been terminated in compliance with all Legal Requirements, including but not limited to, COBRA and providing timely required notices to all Persons. Further, there are no Liabilities or claims pending or anticipated relating to any terminated Employee Benefit Plan.

4.17 Insurance. Section 4.17 of the Disclosure Schedule sets forth a list of each insurance policy, bond or other form of insurance maintained by or for the benefit of the Company or any of its subsidiaries (the "**Insurance Policies**"). With respect to each Insurance Policy: (a) the policy is legal, valid, binding, enforceable, and in full force and effect; (b) the policy will continue to be legal, valid, binding, enforceable, and in full force and effect on the same terms following the consummation of the transactions contemplated hereby; (c) neither the Company nor any of its subsidiaries nor, to the Company's Knowledge, any other party to the policy, is in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy; (d) no party to the policy has repudiated any provision thereof; and (e) the Company has provided to the Parent a true, correct and complete copy of the policy. The Company and each of its subsidiaries has been covered during the past six years by insurance in scope and amount customary and reasonable for the business in which the Company and its subsidiaries has engaged during such period. Section 4.17 of the Disclosure Schedule describes any self-insurance arrangements affecting the Company or any of its subsidiaries.

4.18 Contracts.

(a) Section 4.18 of the Disclosure Schedule sets forth a list of each of the following contracts, agreements or other arrangements to which the Company or any of its subsidiaries is a party or by which any of its assets or properties is bound (the "**Scheduled Contracts**"):

(i) agreement that involves the performance of services or delivery of goods or materials by the Company or any of its subsidiaries that is reasonably expected to result in revenue to the Company or any of its subsidiaries in excess of $75,000;

(ii) bid, offer or proposal that, if accepted, would involve the performance of services or delivery of goods or materials by the Company or any of its subsidiaries that would reasonably be expected to result in revenue to the Company or any of its subsidiaries in excess of $75,000;

(iii) agreement that involves the performance of services for, or delivery of goods or materials to, the Company or any of its subsidiaries that is reasonably expected to result in expenses to the Company or any of its subsidiaries in excess of $75,000;

(iv) collective bargaining agreement or other similar contract with any labor union;

(v) agreement for the employment of any Person on a full-time, part-time, consulting or other basis;

(vi) agreement, guaranty or indenture relating to borrowed money or other Debt of the Company or any of its subsidiaries, or any Lien on any asset of the Company or of any of its subsidiaries;

(vii) each contract, agreement or other arrangement that (A) restricts the ability of the Company or any of its subsidiaries to engage in any line of business or compete with any Person in any geographic area, (B) restricts the right of the Company or any of its subsidiaries to sell or purchase from any Person or to hire any Person, (C) grants to the other party or any third Person “most favored nation” pricing, or (D) grants to the other party or any third Person the exclusive right to act in any manner;

(viii) joint venture or partnership agreement involving a sharing of profits, losses, costs or liabilities by the Company or any of its subsidiaries with any other Person;

(ix) lease or agreement under which the Company or any of its subsidiaries is (A) lessee of or holds or operates any tangible personal property owned by any other Person, except for any lease of tangible personal property under which the aggregate annual rental payments do not exceed $75,000, or (B) lessor of or permits any other Person to hold or operate any tangible property (real or personal) owned by the Company or any of its subsidiaries;

(x) agreement (including any license, sublicense, or other permission) (A) under which the Company or any of its subsidiaries has granted to any Person any rights in any Intellectual Property owned by the Company or any of its subsidiaries, and (B) under which any Person has granted to

the Company or any of its subsidiaries any rights in any Intellectual Property;

(xi) power of attorney granted by or to the Company or any of its subsidiaries;

(xii) agreement with, or loan to or from, any shareholder, director, officer, employee, agent or other Affiliate of the Company or any of its subsidiaries;

(xiii) agreement not entered into in the ordinary course of business;

(xiv) other agreement that (A) involves the payment or potential payment, pursuant to the terms of any such contract or agreement, to or by the Company of more than $75,000, and (B) cannot be terminated within 30 days after giving notice of termination without resulting in any cost or penalty to the Company or any of its subsidiaries; and

(xv) other agreement that is material to the Company or any of its subsidiaries or the Business.

(b) There are no contracts, agreements or other arrangements to which the Company or any of its subsidiaries is a party or by which any of its assets or properties is bound that would constitute a Scheduled Contract except as set forth in Section 4.18 of the Disclosure Schedule. To the Company's Knowledge, there is no outstanding contract, agreement, understanding, bid, offer, or proposal that will, or would if accepted, require the Company or any of its subsidiaries to provide goods and/or services and result in a loss to the Company or any of its subsidiaries in excess of $75,000.

(c) The Company has provided to the Parent a true, correct and complete copy of each written Scheduled Contract and a written description of the material terms of each oral Scheduled Contract. Each Scheduled Contract is a legal, valid and binding obligation of the parties thereto, enforceable against them in accordance with its terms except as such enforceability may be limited by (i) applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (ii) applicable equitable principles (whether considered in a proceeding at law or in equity). Neither the Company nor any of its subsidiaries is, nor to the Company's Knowledge, is any other party is in violation or breach of or default under any Scheduled Contract. The transactions contemplated by this Agreement do not require the consent of any party to any Scheduled Contract, except as set forth in Section 4.2 of the Disclosure Schedule, will not result in a violation or breach of or default under any Scheduled Contract, and will not otherwise cause any Scheduled Contract to cease to be legal, binding, enforceable and in full force and effect on the same terms following the Closing.

4.19 Employees.

(a) The Company has provided to the Parent a list of each employee of the Company or any of its subsidiaries as of the date of this Agreement setting forth, for each such employee, such employee's position title, annual salary or hourly

rate, any other compensation payable (including compensation payable pursuant to bonus, incentive, deferred compensation or commission arrangements) and date of employment. There are no uninsured workers' compensation claims pending or, to the Company's Knowledge, threatened against the Company or any of its subsidiaries.

(b) Neither the Company nor or any of its subsidiaries has experienced any strike or material grievance, claim of unfair labor practices, or other collective bargaining dispute. To the Company's Knowledge, no organizational effort is presently being made or threatened by or on behalf of any labor union with respect to employees of the Company or any of its subsidiaries.

(c) To the Company's Knowledge, no officer or executive manager of the Company or any of its subsidiaries has any plans to terminate his or her employment with the Company or any of its subsidiaries or is a party to any agreement that adversely affects the ability of such officer or executive manager to perform his or her duties with the Company or any of its subsidiaries.

(d) The Company and each of its subsidiaries has complied with the U.S. Immigration and Nationality Act, as amended from time to time, and the rules and regulations promulgated thereunder, and to the Company's Knowledge, there is no basis for any claim that the Company or any of its subsidiaries is not in compliance with the terms thereof. Section 4.19(d) of the Disclosure Schedule sets forth a list of each employee of the Company or any of its subsidiaries who holds a temporary United States work authorization, including H-1B, L-1, F-1 or J-1 visas or work authorizations and shows for each such employee the type of work permit and the length of time remaining on such work permit and the Company or one if its subsidiaries has received the appropriate notice of approval from the applicable Government Entity with respect to each such work permit. No employee of the Company or any of its subsidiaries is (i) a non-immigrant employee whose status would terminate or otherwise be affected by the transactions contemplated by this Agreement, or (ii) an alien who is authorized to work in the United States in non-immigrant status. For each employee of the Company or any of its subsidiaries hired after November 6, 1986, the Company or such subsidiary has retained an Immigration and Naturalization Service Form I-9, completed in accordance with all applicable Legal Requirements.

(e) Each Person who has provided service to the Company or any of its subsidiaries, or to any other Person at the request of the Company or any of its subsidiaries, has been properly classified by the Company or such subsidiary as an employee or independent contractor in compliance with all applicable Legal Requirements.

4.20 Receivables. All notes and accounts receivable of the Company and its subsidiaries are reflected properly on their books and records, are valid receivables and, to the Company's Knowledge, are not subject to set-offs or counterclaims. All accounts receivable of the Company and its subsidiaries are current and collectible, and will be collected in accordance with their terms at their recorded amounts, subject only to the reserve for bad debts set forth on the face of the Latest Balance Sheet.

4.21 Permits and Licenses. Section 4.21 of the Disclosure Schedule sets forth a list of all material licenses, permits, certificates of authority, authorizations, approvals, registrations and similar consents granted or issued by any Government Entity to the Company or any of its subsidiaries or used by the Company or any of its subsidiaries in the conduct of the Business (the "**Permits**"). All of the Permits are currently effective and valid and they are sufficient to enable the Company and its subsidiaries to conduct the Business in compliance with all Legal Requirements. The execution, delivery or performance of this Agreement by the parties will not have any effect on the continued validity or sufficiency of the Permits. No additional licenses, permits, certificates of authority, authorizations, approvals, registrations or similar consents are required as a result of the transactions contemplated by this Agreement to enable the Company or any of its subsidiaries to conduct the Business.

4.22 Tangible Assets. The Company or its subsidiaries owns or leases all buildings, machinery, equipment, computers and related equipment, furniture, vehicles, and other tangible assets necessary for the conduct of the Business. Each such tangible asset is in good operating condition and repair (ordinary wear and tear excepted), and is suitable for the purposes for which it is used.

4.23 Customers . Section 4.23 of the Disclosure Schedule sets forth a list of the five largest customers of the Company for the fiscal year ended December 31, 2016 and includes the net sales or purchases by the Company attributable to each such customer or supplier for each such period. To the Company's Knowledge, no customer listed on Section 4.23 of the Disclosure Schedule intends to cease doing business with the Company or decrease the amount of business it does with the Company in any material respect.

4.24 Certain Practices.

(a) Each of the Company and its subsidiaries is in compliance in all material respects with all applicable anti-corruption Legal Requirements, including the U.S. Foreign Corrupt Practices Act. Neither the Company, nor any subsidiary nor any Majority Stockholder (to the extent acting on behalf of the Company) nor, to the Company's Knowledge, any director, officer, employee, agent or other Person associated with or acting on behalf of the Company has, directly or indirectly: (i) made any corrupt payment, offer, promise or authorization of the payment, offer or promise of anything of value to any Person associated with any Government Entity; (ii) engaged in conduct that would otherwise result in a violation of any Legal Requirements; (iii) established or maintained any unlawful fund of monies or other assets of the Company or any of its subsidiaries; (iv) made any fraudulent entry on the books or records of the Company or any of its subsidiaries; or (v) made any bribe, rebate, payoff, influence payment, kickback or other payment in violation of any Legal Requirements to any Person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business, to obtain special concessions for the Company, to pay for favorable treatment for business secured, to pay for special concessions already obtained for the Company or any of its subsidiaries, or to obtain any other improper advantage.

(b) The Company and its subsidiaries and the Business are in compliance in all material respects with all applicable Legal Requirements relating to anti-money laundering or anti-terrorism, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of

2001, H.R. 3162 (commonly known as the "**Patriot Act**") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively with the Patriot Act and any other antiterrorism laws, the "**Anti-Terrorism Laws**"). To the Company's Knowledge, neither the Company nor any of its subsidiary has done business with any Person with whom the Parent or the Company or such subsidiary is restricted from doing business under any of the Anti-Terrorism Laws, including Persons named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List.

(c) The Company and each of its subsidiaries is in compliance in all material respects with all applicable Legal Requirements governing or concerning (i) the exportation and importation of products, goods, parts, accessories, technology, and services and all other regulations and procedures administered by U.S. Customs and Border Protection of the U.S. Department of Homeland Security, the Bureau of Industry and Security of the U.S. Department of Commerce, the Directorate of Defense Trade Controls of the U.S. Department of State, and the Office of Foreign Assets Control of the U.S. Department of the Treasury; (ii) the obtaining of all necessary permits and licenses from the applicable Government Entity with respect to import and export transactions; (iii) the maintenance of records with respect to import and export transactions and claims (including drawback claims); (iv) the payment in full of all customs duties, Taxes, fees and charges applicable to and due with respect to all import transactions; including any countervailing or antidumping duties; and (v) the transacting of business with any country or Person that is subject to a United States embargo or trade restriction administered by any Government Entity described in (c)(i) above.

(d) No products, goods, parts, or accessories imported by the Company or any of its subsidiaries in the last five years are or have been subject to any countervailing or antidumping duty investigation, order, notice, or other proceeding by the U.S. Department of Commerce or the U.S. International Trade Commission.

ARTICLE 4A

REPRESENTATIONS AND WARRANTIES OF THE MAJORITY STOCKHOLDERS

Except as otherwise set forth in the Disclosure Schedule, each of the Majority Stockholders represents and warrants to the Parent, on a several (and not joint and several basis), and only with respect to itself, as follows and acknowledges that the Parent is relying on such representations and warranties in connection with the transactions contemplated in this Agreement:

(i) If such Majority Stockholder is not an individual, that it has full corporate power and authority to enter into and perform its obligations under this Agreement and that the execution, delivery and performance by such Majority Stockholder of this Agreement has been duly authorized by all requisite corporate action on the part of such Majority Stockholder and no other corporate proceedings on the part of such Majority Stockholder are necessary to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by such Majority Stockholder, and constitutes a legal, valid and binding

obligation of such Majority Stockholder enforceable against it in accordance with its terms.

(ii) Neither the execution, delivery nor performance by such Majority Stockholder of the Transaction Documents to which it is a party (i) violates (A) any Legal Requirement to which it is subject or (B) if such Majority Stockholder is not an individual, any provision of such Majority Stockholder's constating documents, or (ii) in any material respect conflicts with, results in a breach of, constitutes a default under, results in the acceleration of, creates in any party the right to accelerate, terminate, modify, or cancel, or requires any notice, under any material agreement, contract, lease, license, instrument, or other arrangement to which such Majority Stockholder is a party or by which such Majority Stockholder is bound or to which such Majority Stockholder's assets are subject.

(iii) Such Majority Stockholder has not retained any broker in connection with the transactions contemplated by this Agreement.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF THE PARENT AND MERGER SUB

Each of Parent and Merger Sub represents and warrants to the Company as follows:

5.1 Organization, Power and Authorization. The Parent is a corporation duly organized, validly existing and in good standing under the laws of New York. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Merger Sub is a wholly-owned Subsidiary of Parent. Each of Parent and Merger Sub has the requisite power and authority necessary to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is a party. The execution, delivery and performance by each of Parent and Merger Sub of each Transaction Document to which it is a party has been duly authorized by the Parent and Merger Sub, respectively.

5.2 Binding Effect and Noncontravention.

(a) This Agreement has been duly executed and delivered by each of Parent and Merger Sub and constitutes, and each other Transaction Document to which the Parent or Merger Sub is a party when executed and delivered will constitute, a legal, valid and binding obligation of the Parent or Merger Sub (respectively), enforceable against the Parent or Merger Sub (as the case may be) in accordance with its terms.

(b) The execution, delivery and performance by the Parent of the Transaction Documents to which it is a party does not (i) violate (A) any Legal Requirement to which the Parent is subject or (B) any provision of the Parent's Certificate of Incorporation, Bylaws or other incorporation documents, (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Parent is a party or by which the Parent is bound or to which the Parent's assets are subject, or (iii) require any authorization, consent, approval or notice by or to any Person (except for those which have been obtained or

provided). No consent, approval, permit, governmental order, declaration or filing with, or notice to, any Government Entity is required by or with respect to Parent or Merger Sub in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for the written approval from the TSX-Venture Exchange described in Section 6.2.

5.3 Bankruptcy and Insolvency. The Parent is not insolvent, has not committed an act of bankruptcy, proposed a compromise or arrangement to its creditors generally, had any petition for a receiving order in bankruptcy or any application for a bankruptcy order filed against it, taken any proceeding with respect to a compromise or arrangement, taken any proceeding to have itself declared bankrupt, or taken any proceeding to have a receiver appointed of any part of its assets. At the Closing, the Parent will have sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Merger Consideration and the other payments contemplated by this Agreement and to consummate the transactions contemplated by this Agreement.

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

5.5 Legal Proceedings**.** There are no actions, suits, claims, investigations or other legal proceedings pending or, to Parent's knowledge, threatened against or by Parent or Merger Sub or any Affiliate of Parent that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

ARTICLE 6
CLOSING CONDITIONS

6.1 Closing Conditions of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the transactions contemplated by this Agreement are subject to the satisfaction or waiver of the following conditions at or prior to the Closing:

(a) The Company shall have performed, in all material respects, all of its obligations hereunder that are required to have been performed prior to the Closing and the representations and warranties of the Company shall have been true and correct as of the date hereof on and, in all material respects, as of the Closing Date as though such representations and warranties were made on and as of the Closing Date, except for those representations and warranties that refer to facts existing at a specific date, which shall be true and correct as of such date.

(b) The Company shall have delivered to Parent evidence that (i) the Requisite Company Vote has been obtained (either by way of duly called meeting or by written resolution), (ii) holders of Shares constituting no more than (i) 5% of the outstanding Company Preferred Stock and (ii) 15% of the outstanding Shares, in either case immediately prior to the Effective Time, shall have exercised, or remain entitled to exercise, statutory appraisal rights pursuant to Section 262 of the Corporation Law with respect to such Shares and (iii) the Certificate of Merger has been filed with the Secretary of State of the State of Delaware.

(c) The Employment Agreements, duly executed by Seraj Bharwani and Ronald Tache as applicable, shall have been delivered to Parent.

(d) The Escrow Agreement, duly signed by the Majority Stockholders, shall have been delivered to Parent.

(e) The Company shall have provided evidence satisfactory to the Parent and Merger Sub, in their absolute and sole discretion, that it has provided written notice of the Transaction to Plaintiff's Counsel (as such term is defined in the Settlement Agreement) in accordance with the terms of the Settlement Agreement and that the Company has no further Liability in connection therewith.

(f) The Parent shall be satisfied, in its absolute and sole discretion, with the results of the interviews conducted by the Parent or its Affiliates with customers of the Company between the date hereof and the Closing.

(g) The Company shall have provided evidence satisfactory to the Parent and Merger Sub, in their absolute and sole discretion, confirming that: (i) the gross revenue of the Company for the 3 month period ending March 31, 2017 will not be less than $[Amount Redacted]; and (ii) as of the Closing, the Company has signed insert orders for 2017 (i.e. bookings) that represent an amount not less than $[Amount Redacted].

(h) The Company shall have terminated the employment of each of the employees listed in Schedule C in accordance with the terms of their respective employment agreements and otherwise on terms satisfactory to the Parent.

(i) The Parent shall have received, in each case in form and substance satisfactory to it: (i) payoff letters and Lien releases from [Name Redacted] relating to the repayment of Debt owing by the Company to it (including acknowledgments that such payment is in full and final satisfaction of any and all amounts owing to it); and (ii) a termination, release and discharge in connection with the termination of the Company's convertible notes in the amount of $[Amount Redacted], at no cost to the Company.

(j) The Parent shall have received, in form and substance satisfactory to it, an email acknowledgment from [Name Redacted] that the amount to be paid to [Name Redacted] from the Merger Consideration is in full and final satisfaction of any and all amounts owing to it.

(k) A statement from the Company, signed by an authorized officer of the Company, that the Company is not, and has not been during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, a "United States real property holding corporation", as defined in Section 897(c)(2) of the Code, such statement in form and substance reasonably satisfactory to Parent and conforming to the requirements of Treasury Regulations Section 1.1445-2(c)(3) and 1.897-2(h), and a notice to the IRS, in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2) dated as of the Closing Date, together with written authorization for Parent to deliver such notice to the U.S. Internal Revenue Service on behalf of the Company after the Closing.

(l) All releases, consents, approvals and notices required for the consummation of the transactions contemplated hereby and set forth in Exhibit 6.1(l).

(m) A certificate (dated not more than ten days prior to the Closing), as to the good standing of the Company in the State of Delaware and in any other state in which the Company is qualified to do business.

(n) A certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement and the other documents to be delivered hereunder and thereunder.

(o) A certificate dated as of the Closing Date from a duly authorized officer of the Company, in form and substance reasonably satisfactory to the Parent, certifying that (A) attached thereto are true and complete copies of (1) all resolutions adopted by the Board authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and (2) resolutions of the Stockholders approving the Merger and adopting this Agreement, and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby and (C) that each of the conditions specified above in 6.1(a), (b), (i) and (n) are satisfied in all respects.

(p) Releases from each officer of the Company and its subsidiaries and each other employee of the Company named in Schedule C in connection with their termination effective as of the Closing, which such releases shall be made, in the case of those persons listed in Schedule C, in connection with their severance payments.

(q) All minute and record books of the Company and each of its subsidiaries.

(r) Evidence of the termination of the Company's shareholders' agreement.

(s) Such other documents, certificates or instruments as the Parent may reasonably request, in form reasonably satisfactory to the Parent.

6.2 TSX Approval. In addition to the conditions listed in Section 6.1, the Parent's obligation to effect the transactions contemplated by this Agreement shall also be subject to receipt by the Parent of the prior written approval of the TSX Venture Exchange.

6.3 Closing Conditions of Company. The Company's obligation to effect the transactions contemplated by this Agreement is subject are subject to the satisfaction or waiver of the following conditions at or prior to the Closing:

(a) Each of Parent and Merger Sub shall have performed all of its respective obligations hereunder that are required to have been performed prior to the Closing and the representations and warranties of each of Parent and Merger Sub shall have been true and correct as of the date hereof on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date, except for those representations and warranties that refer to facts existing at a specific date, which shall be true and correct as of such date.

(b) The Requisite Company Vote has been obtained and prior to obtaining the Requisite Company Vote, holders of Shares constituting no more than (i) 5% of the outstanding Company Preferred Stock and (ii) 15% of the outstanding Shares, in either case immediately prior to the Effective Time, shall have delivered to the Company a written demand for appraisal of such Shares provided that if the condition in Section 6.1(b) has been waived by the Parent and/or Merger Sub than this condition shall be null and of no force and effect.

(c) The Employment Agreements, each duly executed by Parent, shall have been delivered to the Company.

(d) The Escrow Agreement, duly signed by the Parent, shall have been delivered to the Company.

(e) A certificate (dated not more than ten days prior to the Closing), as to the good standing of Parent under the laws of New York and of Merger Sub under the laws of Delaware.

(f) Such other documents, certificates or instruments as the Company may reasonably request, in form reasonably satisfactory to the Company.

ARTICLE 7
COVENANTS

7.1 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed), the Company shall (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, the Company and each of its subsidiaries shall:

(a) preserve and maintain all of its Permits;

(b) pay its debts, Taxes and other obligations when due;

(c) maintain the properties and assets owned, operated or used by it in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(d) continue in full force and effect without modification all Insurance Policies, except as required by applicable Legal Requirements;

(e) defend and protect its properties and assets from infringement or usurpation;

(f) perform all of its obligations under all contracts relating to or affecting its properties, assets or business;

(g) maintain its books and records in accordance with past practice; and

(h) comply in all material respects with all applicable Legal Requirements.

7.2 Access to Information.

(a) From the date hereof until the Closing or the termination of this Agreement in accordance with its terms, the Company shall (a) afford Parent and its Representatives full and free access to and the right to inspect all of the Leased Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Parent and its Representatives with such financial, operating and other data and information related to the Company as Parent or any of its Representatives may reasonably request; (c) instruct the Representatives of the Company to cooperate with Parent in its investigation of the Company; and (d) arrange for customers of the Company designated by the Parent to be interviewed by the Parent or its Affiliates within 10 Business Days following the date hereof. Any investigation pursuant to this Section 7.2 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company. No investigation by Parent or other information received by Parent shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement.

(b) Parent and the Company shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement between AcuityAds Holdings Inc. and the Company (the "**Confidentiality Agreement**"), which shall survive the termination of this Agreement in accordance with the terms set forth therein.

7.3 No Solicitation of Other Bids.

(a) The Company shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. The Company shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal.

(b) In addition to the other obligations under this Section 7.3, the Company shall promptly (and in any event within three Business Days after receipt thereof by the Company or its Representatives) advise Parent orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry.

(c) The Company agrees that the rights and remedies for noncompliance with this Section 7.3 shall include having such provision specifically enforced by any court

having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Parent and that money damages would not provide an adequate remedy to Parent.

7.4 Approval of Stockholders; Majority Stockholder Support.

(a) As promptly as reasonably practicable following the date of this Agreement (but in no event later than 3 Business Days hereafter), the Company shall prepare and distribute to Company Stockholders an information statement (the "**Information Statement**") describing in reasonable detail all material terms of the Merger and all other transactions incidental thereto. The Company shall expeditiously take all other action necessary to receive the Requisite Company Vote by written resolutions signed by Company Stockholders holding the requisite majority of each class of Shares entitled to vote on this Agreement and the Merger. The Board shall recommend to the Company Stockholders, and not withdraw its recommendation, that they vote in favour of the Merger (the "**Company Board Recommendation**") and the Company, the Board and the Majority Stockholders shall use their best efforts to obtain the Requisite Company Vote in order to consummate the Merger. The Company shall also include in the Information Statement notice to the Company Stockholders of their dissent and appraisal rights pursuant to Section 262 of the Corporation Law. The Stockholder Notice shall include therewith a copy of Section 262 of the Corporation Law and all such other information as Parent shall reasonably request, and shall be sufficient in form and substance to start the twenty (20) day period during which a Stockholder must demand appraisal of such Stockholder's Common Stock as contemplated by Section 262(d)(2) of the Corporation Law. All materials submitted to the Stockholders in accordance with this Section 7.4(a) shall be subject to Parent's advance review and reasonable approval.

(b) Each Majority Stockholder, with respect to all Shares that each such Majority Stockholder owns or over which it otherwise exercises voting or dispositive authority hereby agrees: (i) to vote on the approval of the Merger; (ii) to vote (by way of written consent, in person vote or by proxy) all such Shares in favor of the adoption of this Agreement and approval of the Merger and in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate the Merger; (iii) to refrain from exercising or asserting any dissenters' rights or rights of appraisal under applicable Legal Requirements at any time with respect to the Merger; and (iv) to execute and deliver all related documentation and take such other action in support of the Merger as shall reasonably be requested by the Company, Merger Sub or Parent.

(c) Promptly following the execution of this Agreement, Parent shall execute and deliver, in accordance with Section 228 of the Corporation Law and in its capacity as the sole stockholder of Merger Sub, a written consent adopting the agreement and plan of merger (as such term is used in Section 251 of the Corporation Law) contained in this Agreement.

7.5 Notice of Certain Events.

(a) From the date hereof until the Closing, the Company shall promptly notify Parent in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the Company hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Article 6 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Government Entity in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to the Company's Knowledge, threatened against, relating to or involving or otherwise affecting the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.15 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Parent's receipt of information pursuant to this Section 7.5 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement (including Section 8.2 and Section 9.1(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

7.6 Resignations. The Company shall deliver to Parent written resignations, effective as of the Closing Date, of the officers and directors of the Company and each of its subsidiaries prior to the Closing.

7.7 Governmental Approvals and Consents

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Legal Requirement applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Government Entities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) The Company and Parent shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.2 of the Disclosure Schedule.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Government Entity regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Transaction Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Transaction Document; and

(iii) in the event any order of a Government Entity adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Transaction Document has been issued, to have such order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Government Entity or the staff or regulators of any Government Entity, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Company and Government Entities in the ordinary course of business, any disclosure which is not permitted by any Legal Requirement or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Government Entity or the staff or regulators of any Government Entity, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Notwithstanding the foregoing, nothing in this Section 7.7 shall require, or be construed to require, Parent or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Parent, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Parent of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

7.8 Further Assurances. The Parent and the Company will take such further actions (including the execution and delivery of such further instruments and documents) as the other party may reasonably request to carry out the purposes of this Agreement.

7.9 Litigation Support. From and after the Closing, in the event that and for so long as the Parent or the Company is actively contesting or defending against any third party action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction arising on or prior to the Closing Date involving the Company or the Business, each Majority Stockholder agrees, at the Parent and/or Company's cost and expense, to reasonably cooperate with the Parent and the Company with respect thereto.

7.10 Post-Closing Filings. From and after Closing, each Majority Stockholder agrees, at the Parent and/or Company's cost and expense, to reasonably cooperate with the Parent and the Company as may be necessary in order to complete any filings or notifications required to be made to any Government Entity or pursuant to any Legal Requirement by the Parent, its Affiliates or the Company in connection with this Agreement and the transactions contemplated hereby.

7.11 Confidential Information. Each Majority Stockholder will treat and hold as confidential all of the Confidential Information, refrain from using any of the Confidential Information except in connection with this Agreement, and deliver promptly to the Parent or destroy, at the request and option of the Parent, all tangible embodiments (and all copies) of the Confidential Information which are in their possession. In the event that any Majority Stockholder is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, such Stockholder will notify the Parent promptly of the request or requirement so that the Parent or the Company may seek an appropriate protective order or waive compliance with the provisions of this Section 7.11. If, in the absence of a protective order or the receipt of a waiver hereunder, any Majority Stockholder, on the advice of counsel, is compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, such Stockholder may disclose the Confidential Information to the tribunal; provided, however, that such Stockholder will use such Stockholders' commercially reasonable efforts to obtain, at the reasonable request of the Parent or the Company (and at the Parent's or the Company's cost and expense), an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Parent or the Company designate. Notwithstanding anything herein to the contrary, each party to this Agreement (and each Representative of such party) may disclose to any and all Persons, without limitation of any kind, the Agreement and the transactions contemplated hereby for tax reporting, legal advice and other similar purposes. Notwithstanding anything herein to the contrary, each Majority Stockholder may share this Agreement and information concerning the transactions contemplated hereby, as well the Company's finances and operations, with its existing and prospective Affiliates, partners, shareholders and investors for the purposes of allowing such parties to monitor their investments (provided that the recipients of such information agree to treat and hold as confidential all such Confidential Information), or as required by Legal Requirements.

7.12 Tax Matters.

(a) Tax Contests. Notwithstanding Section 8.5 of this Agreement, this Section 7.12(a) will control any audit, investigation, claim, litigation, dispute or controversy relating to Taxes for which the Majority Stockholders have an obligation to indemnify the Parent Indemnitees under Article 8 for any Pre-Closing Tax Period (any such matter, a "**Tax Contest**"). The Parent will promptly notify the Stockholder Representative in writing following the Parent's or the Company's receipt of written notice of a Tax Contest; provided, however, that the failure to give timely notice under this Section 7.12(a) will not affect any right that any of the Parent Indemnitees has to indemnification hereunder or subject any of the Parent Indemnitees to any Liability except to the extent that the Stockholder Representative demonstrates the Majority Stockholders incur actual damage caused by such failure. The Stockholder Representative will have 30 days after receipt of notice of the Tax Contest to notify the Parent that the Stockholder Representative desires to represent the interest of the Company in such Tax Contest. If the Stockholder Representative notifies the Parent within such 30 day period that the Stockholder Representative desires to represent the interest of the Company in such Tax Contest and that the Majority Stockholders accept Liability for any Damages arising from such Tax Contest, the Stockholder Representative may, at the Majority Stockholders' sole expense, represent the interest of the Company in such Tax Contest. Notwithstanding the foregoing, however, the Stockholder Representative may not represent the interest of the Company in such Tax Contest if (i) there is a reasonable probability that such Tax Contest would materially and adversely affect any of the Parent Indemnitees, other than as a result of money damages, or (ii) the Majority Stockholders would have different, conflicting or adverse legal positions or interests (other than such positions or interests associated with the Majority Stockholders' indemnification obligations under this Agreement). If the Stockholder Representative represents the interest of the Company in a Tax Contest, the Stockholder Representative will use legal counsel and other advisors (including accountants) reasonably acceptable to the Parent. The Parent will have the right (but not the duty) to participate in the defense of such Tax Contest and to employ counsel, solely at the Parent's expense, separate from the counsel employed by the Stockholder Representative. The Stockholder Representative will not enter into any settlement of, admit liability or otherwise compromise any Tax Contest to the extent that it adversely affects the Tax Liability of the Parent Indemnitees for any period after the Closing without the prior written consent of the Parent, which shall not be unreasonably withheld.. The Stockholder Representative will keep the Parent informed with respect to the commencement, status and nature of any such Tax Contest, including insuring that the Parent receives copies of all notices, pleadings or other submissions, and will, in good faith, allow the Parent to consult with the Stockholder Representative regarding the conduct of or positions taken in such proceeding. In order to preserve the right to continue defending such Tax Contest, the Stockholder Representative must actively and diligently conduct the defense, using the counsel approved by the Parent in this Section 7.12(a). If the Stockholder Representative is not permitted to or does not represent the interests of the Company in a Tax Contest, then the Parent or its Affiliates may defend, settle and compromise such Tax Contest in any manner that the Parent deems appropriate. Neither the Parent nor its Affiliates will enter into any settlement of, admit liability or otherwise compromise any Tax Contest to

the extent that it adversely affects the Tax Liability of the Majority Stockholders without the prior written consent of the Stockholder Representative, which shall not be unreasonably withheld. The Parent will keep the Stockholder Representative informed with respect to the commencement, status and nature of any such Tax Contest, including insuring that the Stockholder Representative receives copies of all notices, pleadings or other submissions, and will, in good faith, allow the Stockholder Representative to consult with the Parent regarding the conduct of or positions taken in such proceeding.

(b) Consolidated Tax Returns.

(i) The Parent will cause the Company to file a consolidated federal income Tax Return with the Parent, and the Company will become a member of the Parent's consolidated group as of the end of the Closing Date in accordance with Treasury Regulations Section 1.1502-76(b)(1)(ii), but not in respect of any Pre-Closing Tax Period or any portion of a Straddle Period commencing prior to the Closing Date.

(ii) The Parent shall prepare or cause to be prepared, at the Parent's expense, and timely file or cause to be timely filed all Tax Returns required to be filed by or on behalf of the Company with respect to any taxable period ending prior to or including the Closing Date which are first due after the Closing Date (each, a "**Pre-Closing Tax Return**"), and timely remit or cause to be timely remitted any Taxes reported thereon to the appropriate Governmental Entity. All such Pre-Closing Tax Returns shall be prepared in accordance with applicable Legal Requirements and the Company's past practice (provided that such past practice is consistent with applicable Legal Requirements).

(c) Cooperation. The Parent and the Stockholder Representative agree to furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating to Taxes, including access to books and records, in such party's possession as is reasonably necessary for the filing of all Tax Returns by Parent, the Stockholders or the Stockholder Representative (as applicable), the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax.

7.13 Release. Effective as of the Closing, each Company Stockholder consenting to the Merger or executing and delivering a Letter of Transmittal, on behalf of himself, herself or itself and any Person claiming through or under him or her, whether derivatively or otherwise, releases and forever discharges the Company and its subsidiaries, shareholders, officers, directors, managers, employees, agents, attorneys, Affiliates, successors and assigns, and all of their respective assets, tangible and intangible, real and personal from all actions, causes of actions, suits, debts, sums of money, accounts, or other claims or demands whatsoever, in law, equity or otherwise, whether fixed or contingent, known or unknown, which such Company Stockholder ever had, now has or hereafter may have, upon or by reason of, or arising out of, any circumstance, agreement, event or matter occurring or existing on or prior to the Closing Date, except for (a) the rights, liabilities and obligations arising out of, and the transactions contemplated by, this Agreement, the other Transaction Documents and/or any other documents executed in connection with the transactions contemplated by this Agreement, and

(b) any vested benefits that such Company Stockholder may have as a beneficiary under the Employee Benefit Plans of the Company that are listed in Section 4.16(a) of the Disclosure Schedule. Each Company Stockholder represents and warrants that it has not assigned any of its claims released by this Section 7.13 to any other Person on or prior to the date hereof, and it will not assign any such claim. Such Company Stockholders irrevocably covenant to refrain from, directly or indirectly, asserting any claim or demand, or commencing, instituting or causing to be commenced, any legal proceeding of any kind against any released party based upon any matter released pursuant to this Section 7.13.

7.14 Attorney-Client Privilege; Continued Representation. The parties hereto hereby acknowledge that Cooley LLP and Brown & Rosen LLC have acted as counsel to the Company and certain of its stockholders from time to time prior to the transactions contemplated herein as well as with respect to the transactions contemplated herein. The following provisions apply to the attorney-client relationship between (a) the Company and Cooley LLP and the Company and Brown & Rosen LLC prior to Closing and (b) the Stockholders (and any subset of them) and Cooley LLP and the Stockholders (and any subset of them) and Brown & Rosen LLC following Closing. Each of the parties hereto agrees that (i) it will not seek to disqualify Cooley LLP or Brown & Rosen LLC from acting and continuing to act as counsel to any of the Stockholders either in the event of a dispute hereunder or in the course of the defense or prosecution of any claim relating to the transactions contemplated herein, and (ii) except as any of them may be compelled to disclose any matter related to this Agreement or the Merger, the Stockholders have a reasonable expectation of privacy with respect to their communications (including any e-mail communications using the Company's e-mail system) with Cooley LLP and/or Brown & Rosen LLC prior to Closing to the extent that such communications concern the transactions contemplated herein.

7.15 Indemnification of Directors/Officers. From the Effective Time until the sixth anniversary of the date on which the Effective Time occurs, all rights to indemnification by the Company existing in favor of those Persons who are directors and officers of the Company as of the date of this Agreement (the "**D&O Indemnitees**") for their acts and omissions occurring prior to the Effective Time, as provided in the certificate of incorporation and bylaws of the Company or in an indemnification agreement between a D&O Indemnitee and the Company provided to Parent prior to the date of this Agreement, shall survive the Merger and shall be observed by the Surviving Corporation to the fullest extent available under Delaware Law. Prior to the Closing, the Company shall purchase an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance policy in effect on the date of this Agreement (the "**Current Policy**") for the D&O Indemnitees (the "Tail Policy"). The Company shall be responsible for the cost of the Tail Policy and such amount shall be deemed a Transaction Expense under Section 3.1(e) hereof. The Tail Policy purchased by the Company shall provide the D&O Indemnitees with coverage for six (6) years from and after the Effective Time with respect to acts or omissions occurring at or prior to the Effective Time and shall contain terms and coverage amounts at least as favorable as the terms and coverage amounts of the Current Policy and reasonably acceptable to Parent. For the period of six (6) years from and after the Effective Time, the Surviving Corporation shall not cancel or amend the Tail Policy.

7.16 Assistance from Executives. In consideration of the transactions contemplated hereby, Seraj Bharwani and Ronald Tache shall provide consulting services to the Parent to facilitate the Closing and the integration of the Business with the businesses of the Parent and its Affiliates. Such consulting services shall be provided until the Outside Date or until the Closing, whichever occurs first.

ARTICLE 8
SURVIVAL AND INDEMNIFICATION

8.1 Survival of Representations and Warranties. All of the representations and warranties contained in this Agreement will survive the Closing and continue in full force and effect through the Escrow Period; provided, however, that any representation and warranty involving fraud or fraudulent misrepresentation by a party giving that representation and warranty will survive indefinitely with respect to that party. The covenants and agreements of the parties contained in this Agreement will survive the Closing until the date by which such covenant or agreement is required to be performed and, if no term is specified, until the expiration of the applicable statute of limitations relating thereto. Notwithstanding the preceding sentences, any breach of any representation, warranty, covenant or agreement in respect of which indemnification is claimed under this Agreement will survive the time at which it would otherwise terminate pursuant to the preceding sentences if the Indemnified Party gives written notice of the breach giving rise to such right of indemnification to the Indemnifying Party prior to such time.

8.2 Indemnification by Majority Stockholders. Subject to the provisions of this Article 8 (including Section 8.4):

(a) Each Majority Stockholder, severally but not jointly, will indemnify and hold harmless the Parent, its Affiliates (including, after the Closing, the Surviving Corporation) and their respective officers, directors, employees, agents and representatives after the Closing Date (collectively, the "**Parent Indemnitees**") from and against any Damages that any of the Parent Indemnitees may incur as a result of: (i) the breach of any of the representations and warranties made by the Company or such Majority Stockholder in Article 4 or 4A of this Agreement or in any other document delivered pursuant to this Agreement or any Transaction Document to which such Majority Stockholder is a party (provided that, in the event of any such misrepresentation, inaccuracy or breach, solely for purposes of determining the amount of any loss and not to determine whether a loss has occurred, no effect will be given to any qualification as to "materiality" or "Knowledge" contained therein); (ii) the non-fulfillment or breach of any covenant made by such Majority Stockholder in this Agreement or any Transaction Document to which it is a party or any claim based on fraud committed by such Majority Stockholder; (iii) any payments made to the Company Stockholders holding Dissenting Shares in accordance with Section 262 of the Corporation Law; (iv) any claim by any former employee of the Company including, without limitation, the employees listed in Schedule C; and (v) any claim by or on behalf of a current or former Company Stockholder in respect of the Merger including, without limitation, any claim relating to or arising out of the approval of the Merger, the disclosure or non-disclosure of information relating to the Merger, the calculation, allocation and payment of the Merger Consideration, or the payment of any amounts to employees of the Company or the Surviving Corporation under the Employment Agreements or otherwise.

(b) Taxes.

(i) Indemnification. Each Majority Stockholder, severally but not jointly, will indemnify the Parent Indemnitees from and against any Damages that any of the Parent Indemnitees may incur as a result of (A) any Liability for Taxes of the Company arising out of a Pre-Closing Tax Period that

becomes a Liability of any of the Parent Indemnitees under any bulk transfer law of any jurisdiction, under any common law doctrine of de facto merger or successor liability, or otherwise by operation of law and (B) any Liability for Taxes (or the non-payment thereof) of the Company for all Pre-Closing Tax Periods, including Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor) is or was a member on or prior to the Closing Date and any Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by contract or pursuant to any Legal Requirement, which Taxes relate to an event or transaction occurring during the Pre-Closing Tax Periods; provided, however, the Majority Stockholders shall have no obligation to indemnify the Parent Indemnitees from and against any Damages that any of the Parent Indemnitees may incur as a result of (I) any amount of Taxes taken into account in the calculation of Merger Consideration, or (II) any Taxes resulting from an election under Section 336 or Section 338 of the Code made with respect to the Company or any of its subsidiaries after the Closing

(ii) Straddle Periods. In the case of any taxable period that includes (but does not end on) the Closing Date (a "**Straddle Period**"), (A) in the case of sales, use or payroll Tax or a Tax that is based on net or gross income, the amount of any Taxes of the Company and its subsidiaries for the Pre-Closing Tax Period will be determined based on an interim closing of the books as of the close of business on the Closing Date (and in the case of any Taxes attributable to the ownership of any equity interest in any "controlled foreign corporation" (within the meaning of Section 957(a) of the Code or any comparable state, local or non-U.S. Law), as if the taxable period of such "controlled foreign corporation" ended as of the end of the close of business on the Closing Date), (B) in the case of a Tax that is based on a specific event or transaction, the amount of any Taxes for the Pre-Closing Tax Period will be determined based on the actual date of such event or transaction, and (C) the amount of other Taxes of the Company for a Straddle Period which relate to the Pre-Closing Tax Period will be deemed to be the amount of such Tax for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the Straddle Period.

(c) The right of the Parent Indemnitees to indemnification, payment of losses or other remedy based on the Company's' representations, warranties, covenants and obligations will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation.

8.3 Indemnification Obligations of the Parent. The Parent will indemnify the Stockholders, their respective Affiliates (excluding the Company) and their respective officers, directors, employees, agents and representatives after the Closing Date (collectively, the "**Company Stockholder Indemnitees**") from and against any Damages which any of the Stockholder

Indemnitees may incur as a result of (a) the breach of any of the representations and warranties made by the Parent in this Agreement or any Transaction Document to which it is a party or (b) the non-fulfillment or breach of any covenant or agreement made by the Parent in this Agreement or in any Transaction Document to which it is a party.

8.4 Limitations on Indemnity.

Notwithstanding anything to the contrary herein, with respect to any amounts due to the Parent Indemnitees under Section 8.2(a) and/or 8.2(b) (but excluding Section 8.2(a)(ii)) in connection with any claim for indemnification hereunder, the Majority Stockholders shall only be liable up to the amount of the Escrow Amount held by the Escrow Agent and in no event shall the Majority Stockholders have any direct liability to the Parent Indemnitees. In no event will a Majority Stockholder be liable for any breach of covenant or fraud of another Stockholder in excess of the Escrow Amount held by the Escrow Agent.

8.5 Third Party Claims.

(a) Notice. If any third party notifies any Indemnified Party of any matter that could reasonably be expected to give rise to a claim by such Indemnified Party for indemnification pursuant to Section 8.2 or Section 8.3 (a "**Third Party Claim**"), such Indemnified Party will give the Indemnifying Party from whom indemnification is sought written notice of such Indemnified Party's claim for indemnification within a reasonable period after the Indemnified Party receives written notice of such Third Party Claim; provided, however, that the failure of any Indemnified Party to give timely notice will not affect any rights to indemnification hereunder except to the extent that the Indemnifying Party demonstrates actual damage caused by such failure.

(b) Control of Defense. An Indemnifying Party, at its option, may defend the Indemnified Party against any Third Party Claim so long as (i) neither the outcome of the Third Party Claim nor the defense of the same by the Indemnifying Party is reasonably likely to have a material adverse effect on the Parent or the Company, (ii) the Indemnifying Party notifies the Indemnified Party in writing within 30 days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party for the Damages the Indemnified Party may suffer as a result of such Third Party Claim, (iii) the Third Party Claim does not involve Taxes or Environmental Laws, (iv) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief, (v) the Indemnifying Party is not a party to the Third Party Claim such that the Indemnified Party determines in good faith that joint representation would be inappropriate, and (vi) the Indemnifying Party diligently defends the Third Party Claim. If the Indemnifying Party defends against the Third Party Claim, the Indemnified Party may participate in the defense and employ counsel of its choice for such purpose; provided, that such employment will be at the Indemnified Party's own expense.

(c) Settlement. So long as the Indemnifying Party has assumed and is conducting the defense of the Third Party Claim in accordance with Section 8.5(b), (i) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (which will not be unreasonably withheld, conditioned or

delayed), and (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (which will not be unreasonably withheld, conditioned or delayed). In the event the Indemnifying Party does not assume and conduct the defense of the Third Party Claim in accordance with Section 8.5(b), (1) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim, and (2) the Indemnified Party may defend against, but may not consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim without the consent of the Indemnifying Party (which will not be unreasonably withheld, conditioned or delayed) and the Indemnifying Party will be responsible for any Damages the Indemnified Party may suffer as a result of the Third Party Claim to the extent provided in this Article 8.

8.6 Direct Claims

Any claim for indemnification pursuant to Section 8.2 or Section 8.3 by an Indemnified Party on account of Damages which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Damages that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

8.7 No Indemnification by the Company. Each Majority Stockholder agrees that he, she or it will not make any claim for indemnification against the Company by reason of the fact that he, she or it was a director, officer, employee, or agent of the Company or was serving at the request of the Company as a partner, trustee, director, officer, employee, or agent of another Person (whether such claim is for judgments, damages, penalties, fines, costs, amounts paid in settlement, losses, expenses, or otherwise and whether such claim is pursuant to any statute, charter document, bylaw, agreement, or otherwise) with respect to any action, suit, proceeding, complaint, claim, or demand brought by the Parent against such Stockholder (if such action, suit, proceeding, complaint, claim, or demand is pursuant to this Agreement).

8.8 Characterization of Indemnity Payments. Any indemnification payments made pursuant to this Agreement will be treated for all Tax purposes as an adjustment to the Merger Consideration, unless otherwise required by applicable Legal Requirements.

8.9 Sole Remedy. Following the Closing, the Parties agree that the right of the Parent Indemnitees to claim against and deduct from the Escrow Amount held by the Escrow Agent any amount of Damages or any other amount payable or owing to Parent Indemnitees by the Company or the Company Stockholders (including the Majority Stockholders) under this Agreement and/or the Escrow Agreement shall be the sole and exclusive remedy that any Parent Indemnitee will have with respect to any amounts due hereunder, including without limitation Sections 3.4(d)(i), 3.4(e), 8.2(a) and/or 8.2(b) (but excluding Section 8.2(a)(ii)). Notwithstanding anything to the contrary contained herein but subject to Section 8.2(a)(ii), no Company Stockholder will have any direct liability in respect of any indemnification or set-off or other claim from any source other than the Escrow Amount held by the Escrow Agent or in an aggregate amount in excess of the Escrow Amount held by the Escrow Agent, it being agreed that if the Escrow Amount is reduced to zero in accordance with the provisions of this Agreement and the Escrow Agreement, Parent and the Parent Indemnitees shall have no further rights to indemnification or set-off, or any other claims, pursuant to this Agreement, including without limitation Sections 3.4(d)(i), 3.4(e), 8.2(a) and/or 8.2(b) (but excluding Section 8.2(a)(ii)). If a matter pursuant to which indemnification may be due to the Parent pursuant to Sections 3.4(d)(i), 3.4(e), 8.2(a) and/or 8.2(b) is pending on a date upon which the Escrow Amount held by the Escrow Agent, or any other amount payable or owing to the Company Stockholders by Parent under this Agreement, is due and payable to the Company Stockholders, then Parent may withhold from such payment an amount equal to Parent's reasonable estimate of Losses that the Parent may sustain as a result thereof until such matter has been finally resolved.

8.10 Insurance. The amount of any Damages for which indemnification is provided under this Article 8 shall be reduced by any related recoveries to which the Indemnified Party receives under insurance policies (net of any increase in any premium resulting therefrom) or other related payments received or receivable from third parties. The Indemnified Party shall reimburse the Indemnifying Parties for any and all Damages paid by the Indemnifying Parties to the Indemnified Party pursuant to this Agreement to the extent such amount is subsequently paid to the Indemnified Party by any Person other than the Indemnifying Parties.

ARTICLE 9
TERMINATION

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

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

(b) by either Parent, on the one hand, or the Company, on the other hand, if the Closing has not taken place on or before the Outside Date, other than as a result of any failure on the part of such terminating party to comply with or perform any covenant or obligation of such terminating party set forth in this Agreement;

(c) by Parent by written notice to the Company if:

(i) the Parent is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Company pursuant to this Agreement and such breach, inaccuracy or failure has not been cured by the Company within ten days of the Company's receipt of written notice of such breach from Parent; or

(ii) any of the conditions set forth in Section 6.1 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of Parent to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(d) by the Company by written notice to Parent if:

(i) the Company is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Parent or Merger Sub pursuant to this Agreement and such breach, inaccuracy or failure has not been cured by Parent or Merger Sub within ten days of Parent's or Merger Sub's receipt of written notice of such breach from the Company; or

(ii) any of the conditions set forth in Section 6.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of the Company to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(e) by Parent or the Company if:

(i) there shall be any Legal Requirement that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or any Government Entity shall have issued an order restraining or enjoining the transactions contemplated by this Agreement, and such order shall have become final and non-appealable; or

(ii) if within 30 days following the execution and delivery of this Agreement by all of the parties hereto, the Company shall not have delivered to Parent evidence of receipt of the Requisite Company Vote; or

(iii) the condition set forth in Section 6.2 shall not have been, or if it becomes apparent that such condition will not be, fulfilled by the Outside Date.

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

(a) as set forth in this Article 9, Section 7.11 and Article 10; and

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

ARTICLE 10
MISCELLANEOUS

10.1 Public Announcements. Neither the Company nor any Majority Stockholder will issue any press release or make any public announcement relating to the subject matter of this agreement without the prior written consent of the Parent. The Parties shall jointly plan and co-ordinate any public notices, press releases, and any other publicity concerning the transactions contemplated by this Agreement and no Party shall act in this regard without the prior approval of the other, such approval not to be unreasonably withheld, unless such disclosure is required to meet timely disclosure obligations of the Parent under Laws or stock exchange rules in circumstances where prior consultation with the other Party is not practicable and a copy of such disclosure is provided to the other Party at such time as it is made to the regulatory authority.

10.2 Stockholder Representative

(a) The Company, each Majority Stockholder and each other Company Stockholder consenting to the Merger hereunder irrevocably appoints [Name Redacted] (the "**Stockholder Representative**"), to act as representative, agent, proxy and attorney-in-fact for all Company Stockholders for all purposes under this Agreement and the Escrow Agreement including, without limitation, the full power and authority on each Company Stockholder's behalf to: (i) receive notices or service of process, (ii) negotiate, determine, compromise, settle and take any other action permitted or called for by the Company Stockholders hereunder, including under Section 3.4 or Article 8 of this Agreement, (iii) execute and deliver any termination, amendment or waiver to this Agreement (whether before or after the Closing); (iv) engage such counsel, experts and other agents and consultants as the Stockholder Representative deems necessary in connection with exercising the powers granted hereunder and (in the absence of bad faith on the part of the Stockholder Representative) will be entitled to conclusively rely on the opinions and advice of such Persons and (v) to take all other actions that are either necessary or appropriate in the judgment of the Stockholder Representative for the accomplishment of the foregoing or specifically mandated by the terms of this Agreement. Each such Company Stockholder acknowledges that the Parent will be entitled to conclusively rely upon, without independent investigation, any act, notice, instruction or communication of the Stockholder Representative as provided in this Section 10.2 as the acts of the Company Stockholders, and will not be liable in any manner whatsoever for any action taken or not taken in reliance upon the actions taken or not taken or communications or writings given or executed by the Stockholder Representative.

(b) Each Company Stockholder agrees that such agency and proxy are coupled with an interest, and are therefore irrevocable without the consent of the Stockholder Representative and will survive the death, incapacity, bankruptcy, dissolution or liquidation of any Company Stockholder. All decisions and actions by the Stockholder Representative will be binding upon all Company Stockholders, and no Company Stockholder will have the right to object, dissent, protest or otherwise contest the same. The Stockholder Representative will have no duties or obligations hereunder except those specifically set forth herein and in the Escrow Agreement and such duties and obligations will be determined solely by

the express provisions of this Agreement or the Escrow Agreement. Neither the Stockholder Representative nor any agent employed by the Stockholder Representative will incur any Liability to any Stockholder relating to the performance of the Stockholder Representative's duties hereunder except for actions or omissions constituting fraud or bad faith. The Stockholder Representative will have no Liability in respect of any action, claim or proceeding brought against the Stockholder Representative by any Stockholder if the Stockholder Representative took or omitted taking any action in good faith.

(c) The Stockholder Representative shall be entitled to: (i) rely upon any signature (including facsimiles or reproductions thereof) believed by it to be genuine, and (ii) reasonably assume that a signatory has proper authorization to sign on behalf of the applicable Company Stockholder or other party. All decisions and actions of the Stockholder Representative on behalf of the Company Stockholders shall be deemed to be facts ascertainable outside of this Agreement or the Escrow Agreement, including an amendment, extension or waiver of this Agreement or the Escrow Agreement, shall constitute a decision of all the Company Stockholders and shall be final, binding and conclusive upon the Company Stockholders, including any Majority Stockholder, and shall be binding upon all Company Stockholders, and no Company Stockholders shall have the right to object, dissent, protest or otherwise contest the same.

(d) The Stockholder Representative shall have reasonable access to information about the Surviving Corporation and the reasonable assistance of the Surviving Corporation's officers and employees for purposes of performing its duties and exercising its rights hereunder at such times as may be permitted by Parent (such permission not to be unreasonably withheld, conditioned or delayed); provided that the Stockholder Representative shall (i) treat confidentially and not disclose any nonpublic information from or about the Surviving Corporation to anyone (except (i) in the context of a legal proceeding brought against the Stockholder Representative by Parent or the Surviving Corporation or as otherwise required by law or (ii) on a need to know basis to the Stockholder Representative's retained advisors for such matter who agree to treat such information confidentially) and (iii) not have access to materials or information that, in the sole discretion of Parent, could result in the loss of attorney-client privilege by the Surviving Corporation.

(e) The Majority Stockholders may terminate the services and authority of the Stockholder Representative at any time by delivering written notice to Parent and to the Stockholder Representative. The Stockholder Representative may also resign at any time by delivering written notice of such resignation to the Majority Stockholders and to Parent. In the event of a vacancy is such position, the Majority Stockholders (voting accordance with the number of Shares each formerly held) shall immediately designate a replacement Stockholder Representative, who will assume all authority of such position without notice required to any other Company Stockholder.

(f) The provisions of this Section 10.2 will be binding on the executors, heirs, legal representatives, personal representatives, successor trustees, and successors of each Company Stockholder, and any references in this Agreement or the Escrow Agreement to a Company Stockholder means and includes the successors to

such Company Stockholder's rights hereunder, whether pursuant to a testamentary disposition, the laws of descent and distribution or otherwise.

10.3 Transaction Expenses. The Parent, the Company and each Company Stockholder will bear such party's own costs and expenses (including legal fees and expenses and, in the case of the Company, the Transaction Expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

10.4 Amendments. Subject to Section 10.2(a)(iii), no amendment, modification or waiver of this Agreement will be effective unless made in writing and signed by the party to be bound thereby. No other course of dealing between or among any of the parties or any delay in exercising any rights pursuant to this Agreement will operate as a waiver of any rights of any party.

10.5 Successors and Assigns. All covenants and agreements set forth in this Agreement will bind and inure to the benefit of the respective successors and permitted assigns of the parties. No party may assign this Agreement nor any of its rights, interests or obligations hereunder without the prior written consent of the other parties; provided, however, that the Parent may, and may cause the Surviving Corporation to, assign any or all of its/their rights, interests, and obligations hereunder (a) to one or more of its/their Affiliates, (b) for collateral security purposes to any lender providing financing to the Parent, the Company, the Surviving Corporation or any of their Affiliates and any such lender may exercise all of the rights and remedies of the Parent and the Surviving Corporation hereunder, and (c) to any subsequent purchaser or successor of the Parent, the Company, the Surviving Corporation or any material portion of the assets of the Company or the Successor Corporation (whether any such sale is structured as a sale of equity, a sale of assets, a merger or otherwise).

10.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any choice of law or conflict provision or rule (whether of such state or any other jurisdiction) that would cause the laws of any other jurisdiction to be applied.

10.7 Notices. All demands, notices, communications and reports provided for in this Agreement will be in writing and will be sent by e-mail, personally delivered, sent by reputable overnight courier service (delivery charges prepaid), or sent by registered or certified mail (postage prepaid) to the address specified below, or at such address as the recipient party has specified by prior written notice to the sending party pursuant to the provisions of this Section 10.7.

If to the Parent:

AcuityAds US Inc.
181 Bay Street, Suite 320
Brookfield Place, Bay Wellington Tower
Toronto, ON, M5J 2T3, Canada

Attention: Tal Hayek
e-mail: Tal.Hayek@acuityads.com

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

Cassels Brock & Blackwell LLP
40 King St. West
Scotia Plaza
Suite 2100
Toronto, Ontario
M5H 3C2

Attention: Gary Steinhart
e-mail: gsteinhart@casselsbrock.com

If to any of the Company Stockholders or the Stockholder Representative:

[Name and Address Redacted]

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

Cooley LLP
500 Boylston Street
14th Floor
Boston, MA
02116-3736

Attention: Joshua Rottner
e-mail: jrottner@cooley.com

Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. at the place of receipt, then on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

10.8 Schedules and Exhibits. The exhibits and schedules to this Agreement constitute a part of this Agreement and are incorporated into this Agreement for all purposes as if fully set forth herein. The Disclosure Schedule includes references to the particular section of the Agreement that relates to each disclosure. Any disclosure which may be applicable to another section of this Agreement will be deemed to be made with respect to such other section only if reasonably apparent from the face of such disclosure, regardless of whether or not a specific cross reference is made thereto.

10.9 Counterparts; Electronic Delivery of Signature Pages. This Agreement may be executed in counterparts (including by means of electronic signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same agreement. Delivery of an executed counterpart of this

Agreement by electronic means will be equally as effective as delivery of an original executed counterpart of this Agreement.

10.10 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, no Person that is not a party will have any right or obligation pursuant to this Agreement. Nothing herein will be construed as an amendment to any Employee Benefit Plan for any purpose.

10.11 Headings. The headings used in this Agreement are for the purpose of reference only and will not affect the meaning or interpretation of any provision of this Agreement.

10.12 Entire Agreement. This Agreement (including the exhibits and schedules referred to herein) constitutes the entire agreement of the parties relating to the subject matter hereof, and all prior understandings, whether written or oral are superseded by this Agreement, and all prior understandings, and all related agreements and understandings are terminated (including, without limitation, the Letter of Intent, dated January 26, 2017 among AcuityAds Holdings Inc. and the Company.

10.13 Severability. In case any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement.

10.14 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.15 Cumulative Remedies. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive and will be in addition to any and all other rights, remedies, powers and privileges granted by law, rule, regulation or instrument.

[INTENTIONALLY LEFT BLANK]

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

PARENT:

AcuityAds US Inc.

By: *(Signed) Tal Hayek*
Name: Tal Hayek
Title: President

MERGER SUB:

AA Acquisition Corp.

By: *(Signed) Tal Hayek*
Name: Tal Hayek
Title: President

COMPANY:

Visible Measures Corp.

By: *(Signed)* Brian Shin
Name: Brian Shin
Title: Chief Executive Officer

MAJORITY STOCKHOLDERS:

[Names and Signatures Redacted]

(Signed)
[Name Redacted] solely in such Person's capacity as the Stockholder Representative

Exhibit “A”
Majority Stockholders

[Exhibit Redacted]

Exhibit "3.4"
Net Working Capital Calculation

	Closing Date
Cash and Cash Equivalents	_____
Accounts Receivable	_____
Other Current Assets	_____
TOTAL CURRENT ASSETS (A)	_____
Accounts Payable	_____
Other Current Liabilities	_____
TOTAL CURRENT LIABILITIES (B)	_____
GROSS WORKING CAPITAL (A-B)	
Less: Cash & Cash equivalents (distributed to company)	_____
NET WORKING CAPITAL	_____

Exhibit 6.1(l)
Required Consents

[Exhibit Redacted]

Schedule "A"
Company Debt

[Schedule Redacted]

Schedule “B”
Transaction Expenses

- Legal, banking & other professional fees totalling approximately $[Amount Redacted]
- Management Liability 6-year tail totalling approximately $[Amount Redacted]
- Severance payments to employees of $[Amount Redacted]

Schedule “C”
Terminated Employees

[Names Redacted]

VISIBLE MEASURES CORP.

DISCLOSURE SCHEDULE

This disclosure schedule (the "***Disclosure Schedule***") is delivered by Visible Measures Corp., a Delaware corporation (the "***Company***") pursuant to Article 4 of the Agreement and Plan of Merger (the "***Merger Agreement***"), dated as of March 9, 2017, by and between the Company, AcuityAds US Inc., AA Acquisition Corp. and the other named parties thereto.

The information contained in this Disclosure Schedule is subject to the following general qualifications:

(i) such information is not limited to matters required by the Merger Agreement to be reflected or disclosed in this Disclosure Schedule;

(ii) a section of the Disclosure Schedule relating to one section of the Merger Agreement may cross-reference matter(s) disclosed on a section of the Disclosure Schedule relating to any other Section of the Merger Agreement;

(iii) the headings used herein are for convenience purposes only and in no way expand or otherwise modify the information requests in the Merger Agreement; and

(iv) no reference to or disclosure of any item or other matter in this Disclosure Schedule shall be construed as an admission or indication to any third party concerning any item set forth herein.

Section 4.1 – Organization and Power; Authority; Board Approval

(a)

1. Visible Measures Corp.:
    a. Delaware
    b. Massachusetts
    c. New York

2. Visible Measures Securities Corp.:
    a. Massachusetts

3. Visible Measures UK Limited:
    a. England and Wales

4. Visible Measures Hong Kong Limited:
    a. Hong Kong

5. Visible Measures (Shanghai) Information Technology Co., Ltd.:
    a. People's Republic of China

Visible Measures (Shanghai) Information Technology Co., Ltd. (维英（上海）信息科技有限公司) (the "***Shanghai Sub***"), a subsidiary wholly owned by Visible Measures Hong Kong Limited, was included in the Abnormal Operation Directory (经营异常名录) by the Market Supervision and Administration Bureau of China (Shanghai) Pilot Free Trade Zone ("***FTZ MSAB***") on June 25, 2015 and July 5, 2016 due to FTZ MSAB's failure to reach the Shanghai Sub via its registered address and the Shanghai Sub's failure to announce its annual report, respectively.

Section 4.2 – Binding Effect and Non-Contravention

[Schedule Redacted]

Section 4.3 – Brokers

[Name Redacted] - exclusive investment banking advisor and broker.

[Name Redacted] – insurance broker for purchase of management liability tail policy

Section 4.4 – Capitalization

[Schedule Redacted]

Section 4.5 – Subsidiaries

1. Visible Measures Corp.
2. Visible Measures Securities Corp.
3. Visible Measures UK Limited
4. Visible Measures Hong Kong Limited
5. Visible Measures (Shanghai) Information Technology Co., Ltd.

Section 4.6 – Financial Statements

[Schedule Redacted]

Section 4.7 – Subsequent Events

[Schedule Redacted]

Section 4.8– Title to Assets

[Schedule Redacted]

Section 4.9 – Compliance with Laws

N/A

Section 4.10 – Undisclosed Liabilities

Liabilities listed on Schedule B

Section 4.11 – Tax Matters

N/A

Section 4.12 – Environmental Matters

N/A

Section 4.13 – Intellectual Property

[Schedule Redacted]

Section 4.14 – Real Estate

100 High Street 7th Floor Boston, MA

WeWork Bryant Park – Times Square New York, NY

Troy Liberty Center (Regus) Troy MI

Section 4.15 – Litigation

[Schedule Redacted]

Section 4.16 – Employee Benefits

[Benefit Plan Information Redacted]

4.16(d):

As a result of this transaction approximately $[Amount Redacted] in deal bonus payments may be paid in aggregate to [Names Redacted] (exact amounts to be determined). Also, the following annual bonus payments will be made to the executive team:

[Names and Amounts Redacted]

Additionally, the following employees will be terminated upon deal closure and will be eligible for their respective severance payments detailed below. These employees will also be eligible for unemployment compensation.

[Names and Amounts Redacted]

Section 4.17 – Insurance

[Schedule Redacted]

Section 4.18 – Contracts

[Schedule Redacted]

Section 4.19 – Employees

As disclosed elsewhere [Names Redacted] will be terminated upon closure of this transaction.

Section 4.20 – Receivables

N/A

Section 4.21 – Permits and Licenses

N/A

Section 4.22 – Tangible Assets

N/A

Section 4.23 - Customers

[Names and Amounts Redacted]

Section 4.24 – Certain Practices

N/A