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FILING COVER SHEET

1. NAME OF APPLICANT: AccessLine Communications Corporation et al.

2. TYPE OF FILING:
   - RATE CHANGE ☐
   - FUEL ADJUSTMENT ☐
   - ADMINISTRATIVE ☐
   - CPCN ☐
   - NEW SERVICE OFFERING ☐
   - OTHER - DESCRIBE [X] Transfer of Control / Financing

   IF A TELECOMMUNICATIONS FILING, WHAT TYPE OF SERVICE IS IMPACTED?

   BASIC _____ COMPETITIVE X DISCRETIONARY _____

3. PROPOSED EFFECTIVE DATE: On or before 12/15/2016

   IS EXPEDITED TREATMENT REQUESTED? YES ☐ NO ☐

4. SHORT SUMMARY OF FILING: Application for authority to transfer indirect control of AccessLine Communications Corporation from funds managed by Oak Hill Capital Partners to funds managed by Madison Dearborn Partners, LLC, and for authority to participate in certain financing arrangements

5. DOES THIS FILING RELATE TO OTHER DOCKETS: YES ☐ NO ☒

   IF YES, LIST DOCKET(S) NO(S): _____

6. IS PUBLIC NOTICE REQUIRED? YES ☐ NO ☒
   IF YES, PLEASE ATTACH COPY OF PROPOSED PUBLIC NOTICE.

7. APPLICANT'S CONTACT PERSON:
   FOR OAK HILL / ACCESSLINE
   Glenn S. Richards
   Christine A. Reilly
   PILLSBURY WINTHROP SHAW PITTMAN LLP
   Tel: (202) 663-8215
   Email: glenn.richards@pillsburylaw.com
   christine.reilly@pillsburylaw.com

   NAME: FOR MDP: Yaron Dori
   TITLE: COVINGTON & BURLING LLP
   PHONE: (202) 662-6000
   FAX: _____
   EMAIL: ydori@cov.com
   WEBSITE (IF APPLICABLE) _____

8. DID YOU PROVIDE A COMPLETE COPY OF THE FILING TO THE PUBLIC ADVOCATE?
   YES ☒ NO ☐ IF YES, WHEN? concurrently with filing, via FedEx

9. FILING FEE ENCLOSED: AMOUNT: $ 350

NOTE: House Bill 681, enacted into law 7/13/98, authorizes the Commission to recover the cost of time spent by in-house staff to process all filings initiated after the date of enactment. You may be required to reimburse the Commission for staff time.

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SHANGHAI SILICON VALLEY WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

September 23, 2016

By Federal Express

Ms. Donna Nickerson, Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 1 00
Dover, DE 19904

Re: Joint Application of AccessLine Communications Corporation, Oak Hill Capital Partners III, L.P, Oak Hill Capital Management Partners III, L.P. and Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P., Madison Dearborn Capital Partners VII, Executive-A, L.P. for Approval of a Holding Company Level Transfer of AccessLine Communications Corporation

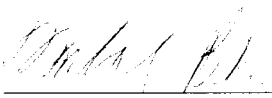
Dear Ms. Nickerson:

Enclosed for filing are an original and ten (10) copies of the application of Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital Partners VII Executive-A, L.P. (collectively, "MDP"), Oak Hill Capital Partners III, L.P., and Oak Hill Capital Management Partners III, L.P. (together, "Oak Hill"), and AccessLine Communications Corporation, an indirect subsidiary of Oak Hill ("AccessLine," and, together with Oak Hill and MDP, the "Applicants"), for such approval as may be required to transfer control of AccessLine to MDP, and for the Applicants to participate in certain financing arrangements. Also enclosed is (1) a check for the $350 filing fee, and (2) an extra copy of the Joint Application for the Commission to date-stamp and return using the enclosed self-addressed stamped envelope.

The Joint Application contains confidential commercial and/or financial information that is exempt from public inspection under 29 Del.C. §10002(l)(2), for which the Applicants seek confidential treatment. In accordance with Rule 1.11 of the Commission's Rules of Practice and Procedure, enclosed herewith is one public copy of the Joint Application from which the confidential information has been omitted.

Any further questions regarding this filing may be directed to the undersigned.

Respectfully submitted,



Yaron Dori
Michael Beder
Ani Gevorkian
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, N.W.
Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
E-mail: ydori@cov.com
mbeder@cov.com
agevorkian@cov.com

Counsel for
Madison Dearborn Capital Partners VII-A, L.P.
Madison Dearborn Capital Partners VII-C, L.P.
Madison Dearborn Capital Partners VII Executive-A, L.P.

BEFORE THE
DELAWARE PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of	)	
	)	
AccessLine Communications Corporation,	)	
Oak Hill Capital Partners III, L.P	)	
Oak Hill Capital Management Partners III, L.P.	)	
	)	PSC Docket No._____
and	)	
	)	
Madison Dearborn Capital Partners VII-A, L.P.	)	
Madison Dearborn Capital Partners VII-C, L.P.	)	
Madison Dearborn Capital Partners VII Executive-A, L.P.	)	
	)	
for Approval of a Holding Company Level Transfer of AccessLine Communications Corporation, and for Certain Financing Arrangements	)	

JOINT APPLICATION
Public Copy

Glenn S. Richards
Christine A. Reilly
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, N.W.
Washington, DC 20036
Tel: (202) 663-8215
Email: glenn.richards@pillsburylaw.com
christine.reilly@pillsburylaw.com

Counsel for
Oak Hill Capital Partners III, L.P.
Oak Hill Capital Management Partners III, L.P.
AccessLine Communications Corporation

Yaron Dori
Michael Beder
Ani Gevorkian
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, N.W.
Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
E-mail: ydori@cov.com
mbeder@cov.com
agevorkian@cov.com

Counsel for
Madison Dearborn Capital Partners VII-A, L.P.
Madison Dearborn Capital Partners VII-C, L.P.
Madison Dearborn Capital Partners VII Executive-A, L.P.

BEFORE THE
DELAWARE PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of	)	
	)	
AccessLine Communications Corporation,	)	
Oak Hill Capital Partners III, L.P	)	
Oak Hill Capital Management Partners III, L.P.	)	
	)	PSC Docket No. _____
and	)	
	)	
Madison Dearborn Capital Partners VII-A, L.P.	)	
Madison Dearborn Capital Partners VII-C, L.P.	)	
Madison Dearborn Capital Partners VII Executive-A, L.P.	)	
	)	
for Approval of a Holding Company Level Transfer of AccessLine Communications Corporation, and for Certain Financing Arrangements	)	

JOINT APPLICATION

Pursuant to 26 Delaware Code § 215, as well as the Rules of Practice and Procedure of the Delaware Public Service Commission ("Commission"), Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital Partners VII Executive-A, L.P. (collectively, "MDP"), Oak Hill Capital Partners III, L.P., and Oak Hill Capital Management Partners III, L.P. (together, "Oak Hill"), and AccessLine Communications Corporation, an indirect subsidiary of Oak Hill ("AccessLine," and, together with Oak Hill and MDP, the "Applicants") respectfully request Commission approval, to the extent required, for a holding company level transaction ("Transaction") that will result in the transfer of control to MDP of AccessLine, an authorized non-dominant provider of telecommunications services in Delaware. In addition, Applicants request approval, pursuant to 26 Del. C. § 215(b), to participate in certain financing arrangements to be entered into in connection with the Transaction, as described more fully herein.

The proposed Transaction is in the public interest because it will provide AccessLine with additional resources, thereby allowing it to become an even more robust competitor in the Delaware market for telecommunications services. The Transaction will result only in a change in the ultimate equity ownership and control of AccessLine; it will not result in an assignment of AccessLine's licenses, assets or customers. AccessLine will continue to provide service to existing Delaware customers under existing rates, terms and conditions, and future changes (if any) in these rates, terms or conditions will be subject to compliance with governing contractual provisions and applicable law. As a result, the proposed Transaction will be seamless, transparent and beneficial to Delaware consumers and is in the public interest.

For these reasons, as further described below, Petitioners respectfully request expeditious Commission approval of the Transaction.

I. DESCRIPTION OF THE PETITIONERS

A. MDP

The funds constituting MDP are managed by their ultimate general partner, Madison Dearborn Partners, LLC ("MDP LLC"). MDP LLC is a leading private equity investment firm based in Chicago, Illinois. Since MDP LLC's formation in 1992, the firm has raised seven funds with aggregate capital of over $22 billion and has completed investments in approximately 132 companies. MDP LLC's objective is to invest in companies with outstanding management teams to achieve significant long-term appreciation in equity value. MDP LLC's founders adopted an industry focused investment approach over 30 years ago, and the firm has six dedicated teams that have long and successful track records of investing in their respective sectors. These sectors include: basic industries, business and government services, consumer, financial and transaction services, health care, and telecom, media and technology services. MDP LLC and its funds do not currently hold an interest in any other telecommunications carrier.

B. Oak Hill Capital Partners III, L.P. and Oak Hill Capital Management Partners III, L.P.

Oak Hill Capital Partners is a private equity firm managing the Oak Hill funds that are sellers in the Transaction, as well as other funds, with more than $9 billion of initial capital commitments since inception from leading entrepreneurs, endowments, foundations, corporations, pension funds and global financial institutions.

Most relevant to this Transaction, Oak Hill owns Intermedia Holdings, Inc. ("Intermedia"), the indirect parent of AccessLine. Intermedia, through its operating subsidiaries, is a premier provider of cloud services to small and mid-sized businesses. Delivered from Intermedia's secure datacenters, these services include hosted Microsoft Exchange email, instant messaging, file management, security, backup, and support for a full range of smartphones, tablets, and other devices. Intermedia's proprietary cloud infrastructure assures high reliability, and a certified support team provides 24/7 assistance to customers. Intermedia also empowers thousands of partners—including managed service providers and select Fortune 500 companies—to sell cloud services under their own brand. Founded in 1995, Intermedia was the first company to offer business-class cloud email.

C. AccessLine Communications Corporation

In Delaware, AccessLine is authorized to provide intrastate telecommunications services pursuant to authority granted by the Commission in PSC Docket No. 04-457 on August 23, 2005. AccessLine is also authorized to provide telecommunications services nationwide. Specifically, AccessLine holds blanket domestic Section 214 authority as well as facilities-based and resold international Section 214 authority from the Federal Communications Commission. In addition to Delaware, AccessLine is provides regulated intrastate telecommunications services in the following jurisdictions: Alabama, Alaska, Arizona, Arkansas, California, Colorado,

Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Upon consummation of the Transaction, AccessLine will retain these authorizations and continue to provide the same services to its customers.

II. CONTACT INFORMATION

For the purposes of this Application, contacts for the Applicants are as follows:

For Oak Hill and AccessLine

Glenn S. Richards
Christine A. Reilly
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, N.W.
Washington, DC 20036
Tel: (202) 663-8215
Email: glenn.richards@pillsburylaw.com
christine.reilly@pillsburylaw.com

Counsel for
Oak Hill Capital Partners III, L.P.
Oak Hill Capital Management Partners III, L.P.
AccessLine Communications Corporation

For MDP

Yaron Dori
Michael Beder
Ani Gevorkian
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, N.W.
Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
E-mail: ydori@cov.com
mbeder@cov.com
agevorkian@cov.com

Counsel for
Madison Dearborn Capital Partners VII-A, L.P.
Madison Dearborn Capital Partners VII-C, L.P.
Madison Dearborn Capital Partners VII Executive-A, L.P.

III. DESCRIPTION OF THE TRANSACTIONS

A. Description of the Transfer of Control

On September 11, 2016, Oak Hill, and Intermedia entered into an Agreement and Plan of Merger with newly formed MDP subsidiaries Ivy Parent Holdings, LLC and Ivy Merger Sub, Inc. (the "Agreement"), pursuant to which MDP will indirectly acquire approximately 98.8% of the voting interests in Intermedia and approximately 86.95% of Intermedia's equity interests.[1] To effectuate the Transaction, Ivy Merger Sub, Inc. will be merged with and into Intermedia, with Intermedia emerging as the surviving entity. When this occurs, MDP LLC will indirectly be Intermedia's controlling shareholder. For the Commission's reference, pre- and post-Transaction organization charts are provided as Exhibit A. A redacted copy of the Agreement is attached as Exhibit B.

B. Description of the Financing Arrangements

Petitioners anticipate that the total amount of funds necessary to complete the transactions contemplated by the Agreement (including the acquisition of indirect control of AccessLine) will be approximately $[redacted]. In connection therewith, Ivy Merger Sub, Inc., Intermedia and certain of its wholly-owned U.S. subsidiaries designated as co-borrowers expect to obtain debt financing in an aggregate amount of up to $[redacted], consisting of one or more secured credit facilities that are sufficient (together with contemplated equity contributions) to finance the transactions contemplated by the Agreement, including repaying the existing indebtedness for borrowed money of Intermedia and its subsidiaries. A portion of such debt financing is expected to include commitments for a senior secured revolving credit facility in an expected aggregate amount of up to $[redacted], available on the closing date of the transactions

[1] The remaining equity and voting interests will be split among various holders, none of whom will hold a 10% or greater equity or voting interest in Intermedia.

for certain specified transaction-related purposes and general working capital purposes, and after the closing date for purposes of financing working capital and general corporate purposes. In order to maintain flexibility, however, MDP is notifying the commission of its intent to participate in debt financing in an aggregate amount of up to $[redacted].

The specific maturity date for any debt instruments issued in connection with the financing will be subject to negotiation and will depend on credit market conditions at the time they are priced and issued. Applicants anticipate that the debt financing will consist solely of long-term indebtedness, and that such maturity dates will be no shorter than 5 years. The interest rate will likely be a market rate for similar financings and will not be determined until the financing arrangements are finalized.

It is expected that (i) the obligations of Ivy Merger Sub, Intermedia and any co-borrowers will be unconditionally guaranteed by Ivy Intermediate Holdings, Inc. (the direct parent company of Ivy Merger Sub and, after the transactions, Intermedia) and each of its existing and future U.S. wholly-owned subsidiaries (with certain exceptions, including immaterial subsidiaries and "unrestricted subsidiaries"), including Intermedia and AccessLine, and (ii) the obligations of Ivy Merger Sub, Intermedia and any co-borrowers under any secured facilities, together with obligations under the guarantees, will be secured by a security interest in substantially all of the assets of Intermedia, the co-borrowers and the guarantors, in each case, now owned or later-acquired, including a pledge of all of the capital stock or membership interests of Intermedia and its U.S. wholly-owned subsidiaries and 65% of the voting capital stock or membership interests (and 100% of any non-voting capital stock or membership interests) of certain of its foreign subsidiaries, subject in each case to the exclusion of certain assets and additional exceptions, including exceptions related to immaterial subsidiaries and unrestricted subsidiaries.

In addition to the debt financing arrangements described above, new and rollover equity investments will provide the financing for the remainder of funds required to consummate the transactions contemplated by the Agreement.

AccessLine's participation in the financing arrangements described above will not adversely affect its current or proposed operations, given MDP's robust financial qualifications as described herein.

C. Financial, Legal and Technical Qualifications

MDP has the requisite financial, technical, legal, and managerial qualifications to acquire control of AccessLine. As explained above, MDP has been involved with the telecom, media and technology industry for over thirty years, and the firm has established a long and successful investment track record. MDP has raised seven funds with aggregate capital of over $22 billion and has completed investments in approximately 132 companies. MDP's financial and experience and scale will enable AccessLine to continue to provide reliable services to Delaware consumers.

IV. PUBLIC INTEREST CONSIDERATIONS

Applicants submit that the proposed Transaction will serve the public interest. Under new ownership, AccessLine will continue to provide high-quality telecommunications services to U.S. consumers, while gaining access to the additional resources and operational expertise of MDP. With the strong financial backing of MDP, the transfer of control will bolster the ability of AccessLine's parent, Intermedia, to provide innovative enterprise services and will give AccessLine the ability to become a stronger competitor, to the ultimate benefit of consumers. The Transaction will not result in a change in carrier, services, rates, terms or conditions for customers, or the assignment of existing Commission authorizations. The Transaction therefore

will be seamless and transparent to customers. Future changes in rates, terms and conditions of service, if any, will be undertaken pursuant to applicable law and contract provisions.

Significantly, the pro-competitive and pro-consumer public interest benefits resulting from the Transaction will not be offset by any anti-competitive harm in the telecommunications marketplace. Fundamentally, the Transaction will not result in any market consolidation. As indicated above, MDP LLC and its funds are not themselves providers of telecommunications services, and they do not hold an interest in any entity that provides telecommunications services.

V. CONCLUSION

For the reasons stated above, Petitioners respectfully submit that the public interest, convenience and necessity would be well served by approval of the holding company level Transaction that will result in the transfer of control to MDP of AccessLine and the financing arrangements described above.

Respectfully submitted,

OAK HILL CAPITAL PARTNERS III, L.P.
OAK HILL CAPITAL MANAGEMENT PARTNERS III, L.P.
ACCESSLINE COMMUNICATIONS CORPORATION

Glenn S. Richards
Christine A. Reilly
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, N.W.

MADISON DEARBORN CAPITAL PARTNERS VII-A, L.P.
MADISON DEARBORN CAPITAL PARTNERS VII-C, L.P.
MADISON DEARBORN CAPITAL PARTNERS VII EXECUTIVE-A, L.P.

Yaron Dori
Michael Beder
Ani Gevorkian
COVINGTON & BURLING LLP
One City Center

Washington, DC 20036
Tel: (202) 663-8000
Fax: (202) 513-8006
Email: glenn.richards@pillsburylaw.com
christine.reilly@pillsburylaw.com

Counsel for
Oak Hill Capital Partners III, L.P.
Oak Hill Capital Management Partners III, L.P.
AccessLine Communications Corporation

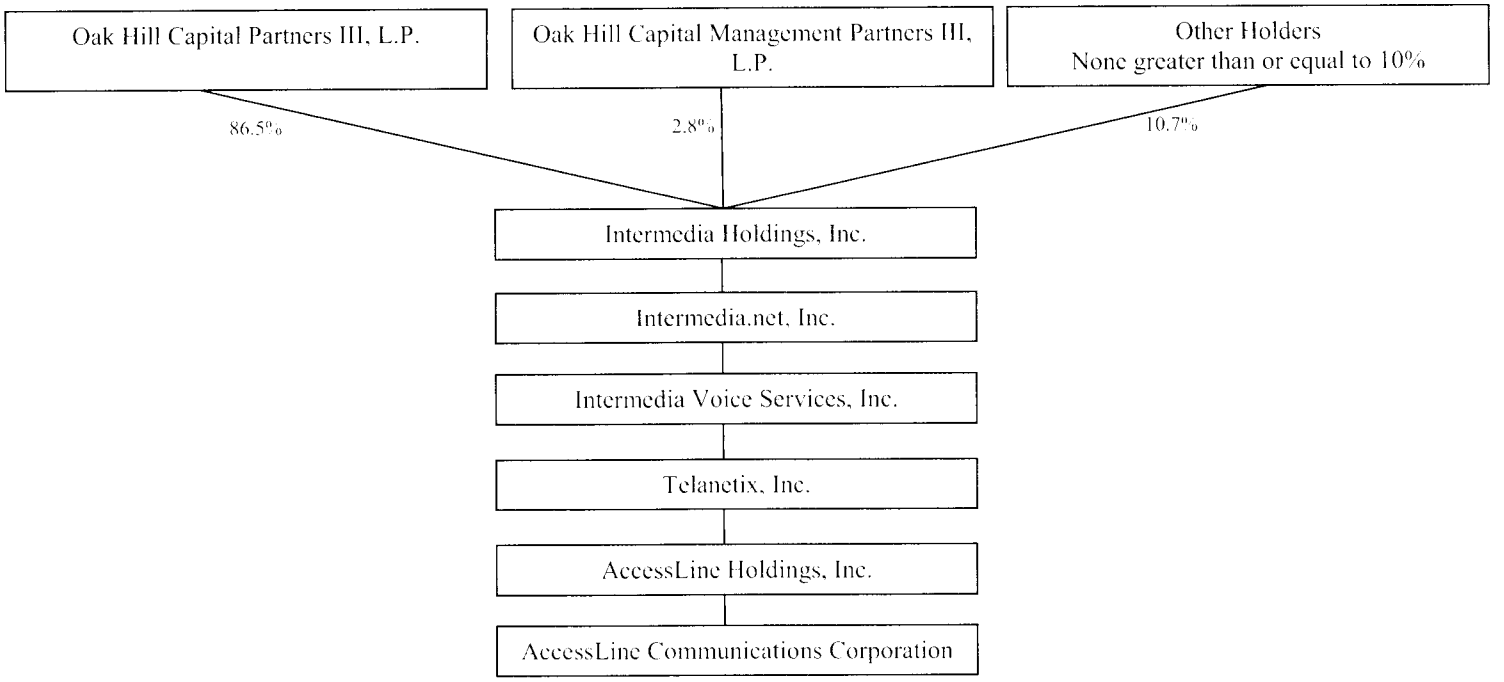
850 Tenth Street, N.W.
Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
E-mail: ydori@cov.com
mbeder@cov.com
agevorkian@cov.com

Counsel for
Madison Dearborn Capital Partners VII-A, L.P.
Madison Dearborn Capital Partners VII-C, L.P.
Madison Dearborn Capital Partners VII Executive-A, L.P.

EXHIBIT A

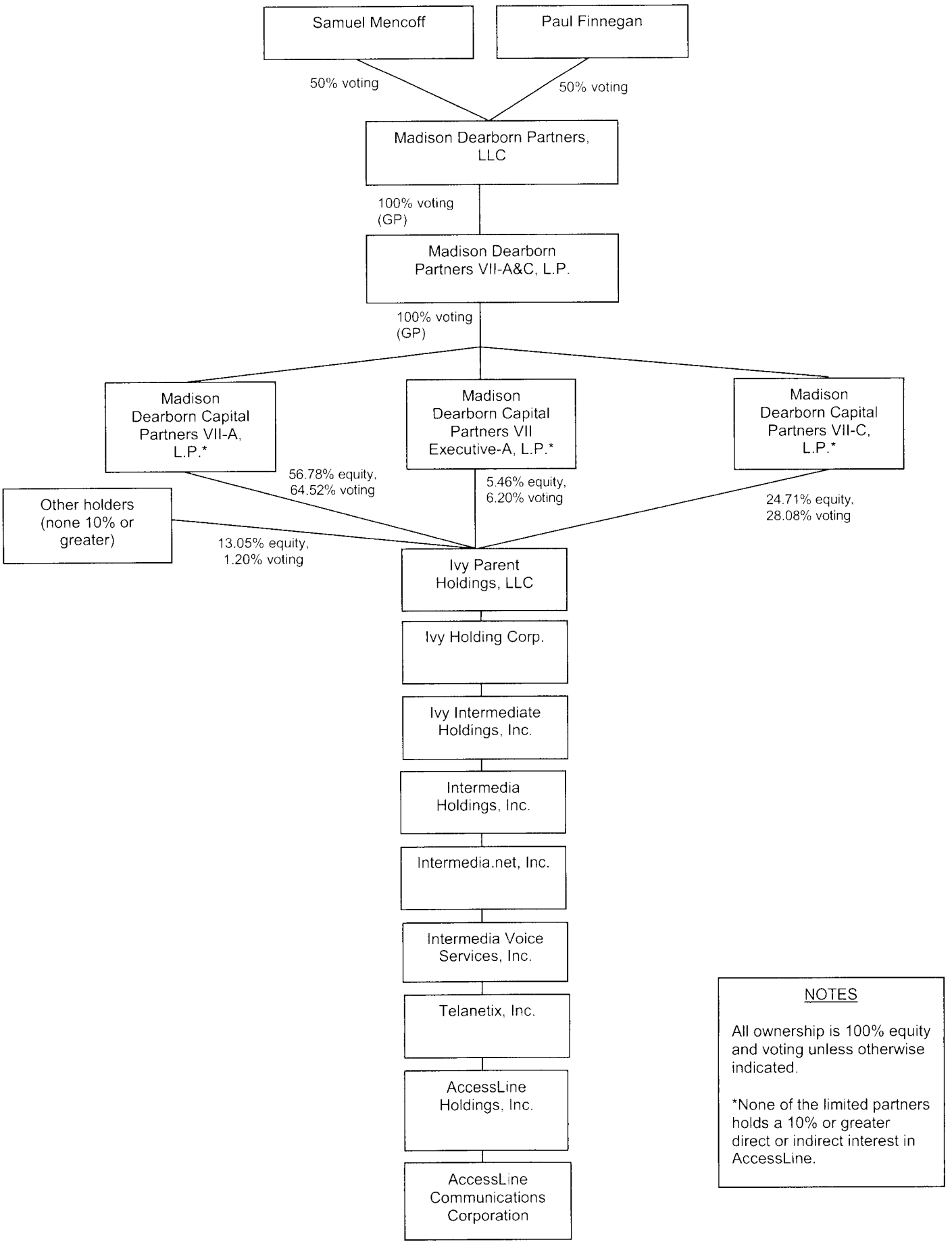
Pre- and Post-Transaction Corporate Ownership Charts

Pre-Transaction Corporate Organizational Chart



* Unless otherwise indicated, ownership is 100%

Post-Transaction Corporate Organizational Chart



NOTES

All ownership is 100% equity and voting unless otherwise indicated.

*None of the limited partners holds a 10% or greater direct or indirect interest in AccessLine.

EXHIBIT B

Agreement and Plan of Merger (Public Copy)

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

by and among

IVY PARENT HOLDINGS, LLC,

IVY MERGER SUB, INC.,

INTERMEDIA HOLDINGS, INC.

and

OAK HILL CAPITAL PARTNERS III, LP,

as Seller Representative

MADE AND ENTERED INTO AS OF SEPTEMBER 11, 2016

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THIS AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is made and entered into as of September 11, 2016 by and among Ivy Parent Holdings, LLC, a Delaware limited liability company ("**Parent**"), Ivy Merger Sub, Inc., a Delaware corporation and an indirect wholly-owned subsidiary of Parent ("**Merger Sub**"), Intermedia Holdings, Inc., a Delaware corporation (the "**Company**"), and Oak Hill Capital Partners III, LP, as Seller Representative (the "**Seller Representative**"). Parent, Merger Sub, the Company and the Seller Representative are sometimes referred to in this Agreement as, individually a "**Party**" or "party", or, collectively, the "**Parties**" or "parties". Capitalized terms in this Agreement have the respective meanings ascribed to them in this Agreement or in Annex A.

RECITALS

A. The respective boards of directors of each of Parent, Merger Sub and the Company have each (i) determined that it is fair, advisable and in the best interests of each such company and its respective stockholders that Parent acquire the Company through the statutory merger of Merger Sub with and into the Company, with the Company as the surviving corporation (the "**Merger**"), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the General Corporation Law of the State of Delaware, as amended (the "**DGCL**") and (ii) approved this Agreement and the Transactions, including the Merger, upon the terms and subject to the conditions set forth herein.

B. The respective boards of directors of the Company and the Merger Sub have each determined to recommend to its stockholders the approval and adoption of this Agreement and, the Transactions, including the Merger.

C. Pursuant to the Merger, among other things, all of the outstanding Company Capital Stock and Company Options shall be converted into the right to receive the consideration set forth herein.

D. Concurrently with the execution of this Agreement, and as a condition and inducement to the Company's willingness to enter into this Agreement, each of Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P. and Madison Dearborn Capital Partners VII Executive-A, L.P. (each a "**Guarantor**" and collectively, the "**Guarantors**") has entered into a guaranty, dated as of the date hereof and in the form attached hereto as Annex B (the "**Guaranty**"), in favor of the Company, pursuant to which the Guarantors, in the aggregate, have guaranteed (A) the full amount of the Termination Fee and (B) all liabilities and damages payable by Parent or Merger Sub pursuant to Section 4.12(a) (*Financing-Parent and Merger Sub Indemnification*) and Section 6.3 (*Termination Fee*), up to an aggregate amount equal to the Parent Liability Limitation.

E. Concurrently with the execution of this Agreement, certain of the Securityholders (the "**Reinvesting Securityholders**") have entered into a Rollover Agreement (as defined below), dated as of the date hereof, in favor of Parent, pursuant to which the Reinvesting Securityholders have agreed to contribute to Parent a portion of the consideration received by such Reinvesting Securityholders pursuant to the terms of this Agreement.

F. The parties desire to make certain representations, warranties, covenants and other agreements in connection with the Merger.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other promises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereby agree as follows:

ARTICLE I
THE MERGER

1.1 **The Merger**. At the Effective Time and upon the terms and subject to the conditions of this Agreement, and applicable provisions of the DGCL, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation and as a wholly owned Subsidiary of Parent. The surviving corporation after the Merger is sometimes referred to herein as the "Surviving Corporation."

1.2 **Closing**.

(a) Subject to the satisfaction or, if permissible, waiver of the conditions set forth in ARTICLE V (*Conditions to the Merger*), the closing of the Merger (the "**Closing**") will take place on the date that is three (3) Business Days following satisfaction or waiver of the conditions set forth in ARTICLE V (*Conditions to the Merger*) (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304; *provided*, that if the Marketing Period has not ended at such time, notwithstanding the satisfaction and/or waiver of such conditions, the Closing shall not occur until the earlier to occur of (i) a date during the Marketing Period specified by Parent on not less than three (3) Business Days' notice to the Company and the Seller Representative, (ii) the third (3rd) Business Day following the final day of the Marketing Period, and (iii) solely if the Marketing Period is scheduled to end on a day that is on or after the third (3rd) Business Day prior to the Outside Date, the final day of the Marketing Period (subject, in each case, to the satisfaction and/or waiver of the conditions precedent set forth in ARTICLE V (*Conditions to the Merger*), and this Agreement not having been validly terminated in accordance with its terms, as of the date determined by this proviso) unless another time and/or place is mutually agreed upon in writing by Parent and the Company. The date upon which the Closing actually occurs shall be referred to herein as the "**Closing Date**."

(b) At the Closing: (i) the parties hereto shall cause a Certificate of Merger, in substantially the form attached hereto as Annex C, to be filed with the Secretary of State of the State of Delaware (the "**Certificate of Merger**"), in accordance with the applicable provisions of the DGCL; (ii) Parent shall deposit or shall cause to be deposited with Wilmington Trust, National Association, or in the alternative a paying agent selected jointly by Parent and the Company prior to the Closing (the "**Paying Agent**"), by wire transfer of immediately available

funds to a bank account designated in writing by the Paying Agent at least two (2) Business Days prior to the Closing Date (the "**Payment Fund**"), an amount in cash equal to the Aggregate Closing Stockholder Proceeds, which shall be held by the Paying Agent in a separate account pursuant to the terms and conditions set forth in this Agreement and the Paying Agent Agreement; (iii) Parent shall deposit or shall cause to be deposited with the Company to a bank account designated in writing by the Company at least two (2) Business Days prior to the Closing Date, by wire transfer of immediately available funds, an amount in cash equal to the Aggregate Closing Option Proceeds, less the Aggregate Securityholder Note Amount; (iv) Parent and the Seller Representative shall execute and deliver an Escrow Agreement, in substantially the form attached hereto as Annex D (the "**Escrow Agreement**") with Wilmington Trust, National Association, or in the alternative an escrow agent selected jointly by Parent and the Company prior to the Closing (the "**Escrow Agent**"); (v) Parent shall deposit or cause to be deposited with the Escrow Agent, by wire transfer of immediately available funds to a bank account designated in writing by the Escrow Agent at least two (2) Business Days prior to the Closing Date, an amount in cash equal to [redacted] (the "**Adjustment Escrow Amount**"), which shall be held by the Escrow Agent in a separate account pursuant to the terms and conditions set forth in this Agreement and the Escrow Agreement to serve as a source of payment of certain adjustments to the Estimated Merger Consideration required by Section 1.9(f) (*Post-Closing Payments*) (the "**Adjustment Escrow Fund**"); (vi) Parent shall deposit or cause to be deposited with the Seller Representative, by wire transfer of immediately available funds to a bank account designated in writing by the Seller Representative at least two (2) Business Days prior to the Closing Date, an amount in cash equal to [redacted] (the "**Seller Representative Fund Amount**"), which shall be held by the Seller Representative in a separate account and shall be available to the Seller Representative solely to pay any reasonable and documented fees, costs or other expenses it may incur in performing its duties or exercising its rights under this Agreement or the Escrow Agreement (the "**Seller Representative Fund**"); (vii) Parent shall pay or cause to be paid, by wire transfer of immediately available funds, all Unpaid Transaction Expenses which by their terms or pursuant to this Agreement are required to be paid at the Closing in accordance with written instructions delivered by the Company at least two (2) Business Days prior to the Closing Date; (viii) Parent shall pay or cause to be paid, by wire transfer of immediately available funds, all Payoff Indebtedness (if any) (other than Payoff Indebtedness repaid by the Company pursuant to Section 4.15) in accordance with payoff letters delivered by the applicable lender(s) at least two (2) Business Days prior to the Closing Date, which payoff letters will be in form and substance reasonably satisfactory to Parent; and (ix) Parent and the Seller Representative shall execute and deliver a Paying Agent Agreement, in substantially the form attached hereto as Annex L (the "**Paying Agent Agreement**") with the Paying Agent.

(c) Additionally, the Company shall deliver, or cause to be delivered, to Parent at or prior to the Closing the following agreements and documents, each of which shall be in full force and effect at and as of the Closing: (i) Securityholder Support Agreements executed by the Company and Securityholders representing at least ninety-five percent (95%) of the outstanding Company Capital Stock as of immediately prior to the Effective Time (including, in any event, a Major Securityholder Support Agreement executed by each Securityholder listed on

Section 1.2(c)(i)(A) of the Disclosure Schedule (each, a "Major Securityholder") and an Other Securityholder Support Agreement executed by each Securityholder listed on Section 1.2(c)(i)(B) of the Disclosure Schedule), in either the form attached hereto as Annex M-1 or Annex M-2, as applicable, (ii) a good standing certificate with respect to the Company from the Secretary of State of the State of Delaware dated no more than five (5) days before the Closing Date, (iii) written resignations of all directors of the Company effective as of the Effective Time, (iv) evidence of the termination of each of the agreements set forth on Section 1.2(c)(iv) of the Disclosure Schedule, in each case, in form and substance reasonably satisfactory to Parent and such that after the Closing, assuming the payment of any amounts due thereunder (as specified in such termination agreement) which shall be treated as Unpaid Transaction Expenses at the Closing, the Company shall not be bound thereby or have any liabilities thereunder, (v) stock certificates of each of the Company's Subsidiaries and (vi) a certificate, dated as of the Closing Date, that complies with Sections 1445 and 897 of the Code and the Treasury Regulations promulgated thereunder certifying that an interest in the Company is not a "United States real property interest" within the meaning of Section 897 and 1445 of the Code and the Treasury Regulations promulgated thereunder.

1.3 **Effect of the Merger**. The Merger shall become effective on the date and time at which the Certificate of Merger has been duly filed with and accepted by the Secretary of State of the State of Delaware or at such other date and time as is agreed between Parent and the Company and specified in the Certificate of Merger (such date and time being hereinafter referred to as the "**Effective Time**"). Subject to Section 8.14 (*Waiver of Conflicts Regarding Representation*) of this Agreement, from and after the Effective Time, the Surviving Corporation shall possess all properties, rights, privileges, powers and franchises of the Company and Merger Sub, and all of the claims, obligations, liabilities, debts and duties of the Company and Merger Sub shall become the claims, obligations, liabilities, debts and duties of the Surviving Corporation, in each case as provided under the DGCL.

1.4 **Certificate of Incorporation and Bylaws**.

(a) Unless otherwise agreed by Parent and the Company prior to the Effective Time, at the Effective Time, the certificate of incorporation of the Company shall be amended and restated in its entirety to be identical to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, except that (i) the name of the corporation shall be the name of the Company, (ii) the provisions related to indemnification, exculpation and advancement of expenses shall be identical to those set forth in the certificate of incorporation of the Company as in effect as of the date of this Agreement and (iii) the identity of the incorporator shall be deleted.

(b) Unless otherwise agreed by Parent and the Company prior to the Effective Time, the bylaws of the Company shall be amended and restated in their entirety to be identical to the bylaws of Merger Sub as in effect immediately prior to the Effective Time, except that (i) the name of the corporation shall be the name of the Company and (ii) the provisions related to

indemnification, exculpation and advancement of expenses shall be identical to those set forth in the bylaws of the Company as in effect as of the date of this Agreement.

1.5 **Directors and Officers**.

(a) Directors. Unless otherwise determined by Parent prior to the Effective Time, the directors of Merger Sub immediately prior to the Effective Time shall become, at the Effective Time, the directors of the Surviving Corporation, each to hold the office of a director of the Surviving Corporation in accordance with the provisions of the DGCL and the certificate of incorporation and bylaws of the Surviving Corporation until their successors are duly elected and qualified, or until their earlier resignation or removal.

(b) Officers. Unless otherwise determined by Parent prior to the Effective Time, the officers of the Company immediately prior to the Effective Time shall become, at the Effective Time, the officers of the Surviving Corporation, each to hold office in accordance with the provisions of the bylaws of the Surviving Corporation until their successors are duly appointed and qualified, or until their earlier resignation or removal.

1.6 **Effect of Merger on the Capital Stock of the Company and Merger Sub and Company Options**.

(a) Effect on Merger Sub Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holder(s) of shares of common stock of Merger Sub, each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one (1) validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares of common stock of Merger Sub shall thereafter evidence ownership of such shares of common stock of the Surviving Corporation.

(b) Effect on Company Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holders of shares of Company Capital Stock:

(i) each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any such shares that are Dissenting Shares or Excluded Shares) shall be cancelled and extinguished and be converted automatically into the right to receive, subject to Section 1.8 (*Mechanics of Exchange*), an amount in cash (without interest) equal to the Per Share Common Merger Consideration, subject to Section 1.6(e) (*Post-Closing Payments*); and

(ii) each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time and held by the Company, Parent or Merger Sub immediately prior to the Effective Time (each, an "**Excluded Share**") shall be cancelled and

extinguished as of the Effective Time, and no consideration shall be delivered in exchange therefor.

Each share of Company Capital Stock shall be automatically cancelled and shall cease to exist, and the holders of certificates (the "**Company Stock Certificates**") that immediately prior to the Effective Time represented such Company Capital Stock shall cease to have any rights with respect to such Company Capital Stock other than the right to receive, upon surrender of such Company Stock Certificates in accordance with Section 1.8 (*Mechanics of Exchange*), the Per Share Common Merger Consideration (other than with respect to any such shares that are Dissenting Shares or Excluded Shares, which shall be subject to Section 1.7 (*Dissenting Shares*) and this Section 1.6(b)(ii), respectively).

(c) Effect on Company Options. Parent shall not assume any Company Option in connection with the consummation of the Transactions. At the Effective Time, each Company Option that is outstanding and unexercised immediately prior to the Effective Time shall be cancelled and extinguished and be converted automatically into the right to receive an amount in cash (without interest and net of any amounts that are required to be withheld or deducted under the Code or any applicable Law in accordance with Section 1.6(d) (*Withholding Taxes*) below) equal to the product of (i) the applicable Option Consideration multiplied by (ii) the number of shares of Company Common Stock underlying such Company Option, subject to Section 1.6(e) (*Post-Closing Payments*). Parent shall cause the Surviving Corporation to pay, by wire transfer of immediately available funds through the Company's normal payroll procedure, to the holder of each such Company Option, (A) as promptly as practicable after the Closing, the portion of the Aggregate Closing Option Proceeds to which such holder is entitled pursuant to this Section 1.6(c), (B) as promptly as practicable after the determination of the Final Merger Consideration pursuant to Section 1.9 (*Calculation of Merger Consideration*) and receipt by the Surviving Corporation of amounts pursuant to Section 1.9(f)(ii) (*Post-Closing Payments-Positive Adjustment*) or Section 1.9(f)(iv) (*Post-Closing Payments-Remaining Adjustment Escrow Fund*), as applicable, the portion of the sum of (x) the Positive Adjustment, if any, and (y) the Remaining Adjustment Escrow Fund, if any, in each case, to which such holder is entitled pursuant to this Section 1.6(c), (C) as promptly as practicable after receipt by the Surviving Corporation of amounts in respect of distributions from the Seller Representative Fund, as applicable, the portion of such amounts being distributed from the Seller Representative Fund, if any, to which such holder is entitled pursuant to this Section 1.6(c), and (D) as promptly as practicable after such amounts become payable pursuant to the terms of Section 4.13(j) (*Transaction Tax Deductions*), any amounts to which such holder is entitled pursuant to the terms of Section 4.13(j) (*Transaction Tax Deductions*). The Company shall take such actions as may be required to terminate the 2011 Plan as of the Effective Time. As promptly as practicable following the date of this Agreement, the Company's Board of Directors (or, if appropriate, any committee thereof administering the 2011 Plan) shall adopt such resolutions to give effect to the transactions contemplated by this Section 1.6(c). Notwithstanding anything to the contrary herein, (x) with respect to any Optionholder that has issued a Securityholder Note to the Company, the portion of the Aggregate Option Proceeds to which such Optionholder would otherwise be entitled pursuant to this Section 1.6(c) shall be reduced by such Optionholder's

applicable Securityholder Note Amount, and the obligations of such Optionholder pursuant to his, her or its Securityholder Note shall be cancelled to the extent of the amount of such offset, and (y) in order to receive any portion of the Aggregate Option Proceeds to which an Optionholder would otherwise be entitled pursuant to this Section 1.6(c), such Optionholder must first have executed and delivered to Parent a Securityholder Support Agreement.

(d) Withholding Taxes. The Company, and on its behalf, Parent, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement or the Escrow Agreement to any Securityholder such amounts as are required to be deducted or withheld therefrom under the Code, or any provision of state, local or non-U.S. Tax Law. To the extent that amounts are so deducted or withheld and paid over to the appropriate Governmental Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Securityholders in respect of whom such deduction and withholding were made.

(e) Post-Closing Payments.

(i) In calculating any amounts payable to Securityholders at the Effective Time for Per Share Common Closing Merger Consideration and Option Closing Consideration (not including the Closing Tax Refund Payments, which shall be allocated pursuant to Section 4.13(j) (*Transaction Tax Deductions*)), the amounts payable shall be allocated among the Securityholders in accordance with Section 1.6(b) (*Effect of Merger on Company Capital Stock*) and 1.6(c) (*Effect of Merger on Company Options*) as if such amount payable at the Effective Time was the only consideration payable in the Merger (the "**Initial Consideration**"). In calculating any amounts payable to Securityholders after the Effective Time under any component of Per Share Common Merger Consideration and Option Consideration, including the Per Share Positive Adjustment, the Per Share Adjustment Escrow Fund Consideration and the Per Share Seller Representative Fund Consideration (other than the Per Share Tax Refund Amount, which shall be allocated pursuant to Section 4.13(j) (*Transaction Tax Deductions*)), such additional amounts shall be allocated among the Securityholders in accordance with Section 1.6(b) (*Effect of Merger on Company Capital Stock*) and 1.6(c) (*Effect of Merger on Company Options*) after taking into account the previous payment of the Initial Consideration and any subsequent payments after the Effective Time (as well as any subsequent recoveries under ARTICLE VII (*Survival; Specific Indemnities; Waiver*) or the Related Agreements from such Securityholders), as if such previously paid payments were being paid in the exact same transaction as the payment of such additional amount. For avoidance of doubt, by operation of this Section 1.6(e), it is possible that the applicable Per Share Positive Adjustment, the Per Share Adjustment Escrow Fund Consideration and the Per Share Seller Representative Fund Consideration may be different among different Securityholders as a result of adjustments for the impact of the exercise price of Company Options.

(ii) In calculating any amounts payable by the Securityholders after the Effective Time pursuant to ARTICLE VII (*Survival; Specific Indemnities; Waiver*), such amounts payable shall be treated as a deduction to the previous payments of the Initial

Consideration and any subsequent payments after the Effective Time (as well as any subsequent recoveries under ARTICLE VII (*Survival; Specific Indemnities; Waiver*) from such Securityholders), as if such previous payments were being paid in the exact same transaction and then reduced by the amount payable by the Securityholders under ARTICLE VII (*Survival; Specific Indemnities; Waiver*), and then allocated among the Securityholders in accordance with Sections 1.6(b) (*Effect of Merger on Company Capital Stock*) and 1.6(c) (*Effect of Merger on Company Capital Options*).

1.7 **Dissenting Shares**.

(a) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Capital Stock held by a holder who has properly exercised his, her or its appraisal rights under, and in compliance with, Section 262 of the DGCL ("**Dissenting Shares**") shall not be converted into or represent a right to receive the consideration for Company Capital Stock set forth in Section 1.6(b) (*Effect of Merger on Company Capital Stock*), but the holder thereof shall only be entitled to such rights with respect to such Dissenting Shares as are expressly provided by Section 262 of the DGCL. At the Effective Time, all Dissenting Shares shall be automatically cancelled and shall cease to exist, and each holder of Dissenting Shares shall cease to have any rights with respect thereto except as set forth in the preceding sentence.

(b) Notwithstanding the provisions of Section 1.7(a) (*Dissenters' Rights*), if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under Section 262 of the DGCL or a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262 of the DGCL, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for Company Capital Stock, as applicable, set forth in Section 1.6(b) (*Effect of Merger on Company Capital Stock*), without interest thereon, and subject to the provisions of ARTICLE VII (*Survival; Specific Indemnities; Waiver*), upon surrender of the certificate representing such shares pursuant to the exchange procedures set forth in Section 1.8 (*Mechanics of Exchange*).

(c) During the Pre-Closing Period, the Company shall give Parent (i) prompt notice of any notice or threat to demand appraisal under the DGCL or demand for appraisal under the DGCL received by the Company, and (ii) the opportunity to direct all negotiations and proceedings with respect to such demands. During the Pre-Closing Period, the Company shall not voluntarily make any payment with respect to any such demands or offer to settle or settle any such demands and shall not use an estimate of fair value in an amount greater than the Per Share Common Merger Consideration in any offer of payment, in each case, without Parent's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

1.8 **Mechanics of Exchange**.

(a) Exchange Procedures. As soon as reasonably practicable after the date of this Agreement, the Company shall mail or cause to be mailed to each Stockholder a letter of transmittal (the "**Letter of Transmittal**") in the form attached hereto as Annex E, together with any notice required pursuant to Section 262 of the DGCL and a request to have such Stockholder deliver an executed Letter of Transmittal to the Paying Agent (with a copy to the Company and Parent) no less than two (2) Business Days prior to the Closing Date. Upon surrender of a Company Stock Certificate(s) (or affidavits of loss in lieu thereof) for cancellation to the Paying Agent, together with a duly completed and validly executed Letter of Transmittal (in each case, with a copy to the Company and Parent), the holder of such Company Stock Certificate(s) shall be entitled to receive in exchange therefor, at or after the Effective Time, subject to the terms and conditions of this Agreement, the amount in cash of the Aggregate Stockholder Proceeds to which such holder is entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*) for each share of Company Capital Stock formerly represented by such Company Stock Certificate(s). Company Stock Certificate(s) so surrendered shall be automatically cancelled as of the Effective Time in accordance with the terms of this Agreement. Following delivery of a Company Stock Certificate (or affidavit of loss in lieu thereof) and a duly executed Letter of Transmittal in accordance with this Section 1.8(a), Parent shall instruct the Paying Agent to pay such amounts to which such holder is entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*), by wire transfer of immediately available funds (or by check if the holder of a Company Stock Certificate does not provide wire instructions), to the holder of each such Company Stock Certificate(s) (or affidavits of loss in lieu thereof), (A) within two (2) Business Days after the later to occur of (x) the Closing and (y) the Paying Agent's receipt of such Company Stock Certificate(s) (or affidavits of loss in lieu thereof), together with a duly completed and validly executed Letter of Transmittal, the portion of the Aggregate Closing Stockholder Proceeds to which such holder is entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*), (B) within two (2) Business Days after the later to occur of (x) the determination of the Final Merger Consideration pursuant to Section 1.9 (*Calculation of Merger Consideration*), (y) Parent's deposit of the Positive Adjustment, if any, in the Payment Fund in accordance with Section 1.9 (*Calculation of Merger Consideration*) and (z) the Paying Agent's receipt of such Company Stock Certificate(s) (or affidavits of loss in lieu thereof) together with a duly completed and validly executed Letter of Transmittal, the portion of the sum of (I) the Positive Adjustment, if any, and (II) the Remaining Adjustment Escrow Fund, if any, in each case to which such holder is entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*), (C) within two (2) Business Days after the later to occur of (x) the Paying Agent's receipt of such Company Stock Certificate(s) (or affidavits of loss in lieu thereof) together with a duly completed and validly executed Letter of Transmittal and (y) the Paying Agent's receipt of distributions from the Seller Representative Fund, if any, the portion of such distributions from the Seller Representative Fund, if any, to which such holder is entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*) and (D) within two (2) Business Days after the later to occur of (x) the Paying Agent's receipt of such Company Stock Certificate(s) (or affidavits of loss in lieu thereof) together with a duly completed and validly executed Letter of Transmittal and (y) the Paying Agent's receipt of distributions pursuant to Section 4.13(j), if any, the portion of such distributions pursuant to Section 4.13(j), if any, to which such holder is entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital*

Stock). Until so surrendered, each outstanding Company Stock Certificate will be deemed for all purposes to evidence only the right to receive the amount of cash into which such shares of Company Capital Stock shall be so exchanged in accordance with the terms of this Agreement.

(b) Lost, Stolen or Destroyed Certificates. If any Company Stock Certificate shall have been lost, stolen or destroyed, then upon the making of an affidavit in form and substance reasonably acceptable to Parent of that fact by the person claiming such Company Stock Certificate to be lost, stolen or destroyed, the Paying Agent will, subject to Section 1.8(a) (*Exchange Procedures*), issue in exchange for such lost, stolen or destroyed Company Stock Certificate the Per Share Common Merger Consideration to which the holder thereof is entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*); *provided*, that Parent may, in its reasonable discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Company Stock Certificate to deliver a bond or other form of indemnification as it may reasonably require as indemnity against any claim that may be made against Parent or the Surviving Corporation with respect to the Company Stock Certificate alleged to have been lost, stolen or destroyed.

(c) Payment Fund. Parent shall cause the Payment Fund to be (i) held for the benefit of the Stockholders in accordance with this Agreement and the Paying Agent Agreement and (ii) subject to the satisfaction of the applicable conditions set forth in this Agreement (including Section 1.8(a) (*Exchange Procedures*)) and in the Paying Agent Agreement, applied promptly to making the payments pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*). The Payment Fund shall not be used for any purpose other than to fund payments pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*), except as expressly provided for in this Agreement and the Paying Agent Agreement. Any portion of the Payment Fund which remains undistributed to the holders of Company Stock Certificates on the first anniversary of the Closing Date shall be delivered to or as directed by Parent, upon demand, and any Stockholder who has not theretofore delivered or surrendered such Stockholder's Company Stock Certificate(s) to the Paying Agent, subject to applicable Law, shall thereafter look as a general creditor only to the Surviving Corporation for payment of such Stockholder's entitlement to the Per Share Common Merger Consideration.

(d) No Liability. Notwithstanding anything to the contrary in this Section 1.8, none of the Paying Agent, Parent or the Surviving Corporation shall be liable to a holder of shares of Company Capital Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(e) Transfers of Ownership. From and after the Effective Time, there shall be no transfers on the stock transfer books of the Company of shares of Company Capital Stock that were outstanding immediately prior to the Effective Time.

(f) No Further Ownership Rights in Company Capital Stock. If Company Stock Certificates are presented to the Surviving Corporation for transfer following the Effective Time, they shall be canceled against delivery of the Per Share Common Merger Consideration,

as provided for in Section 1.6(b) (*Effect of Merger on Company Capital Stock*), for each share of Company Capital Stock formerly represented by such Company Stock Certificates.

1.9 **Calculation of Merger Consideration**.

(a) Merger Consideration. For all purposes of this Agreement, the term "**Merger Consideration**" shall mean: (i) [redacted] (the "**Unadjusted Purchase Price**"), *plus* (ii) the aggregate exercise price of all In the Money Company Options (after giving effect to any acceleration of vesting that occurs at or prior to the Effective Time or otherwise in connection with, or as a result of, the consummation of the Merger), *plus* (iii) the amount of Closing Cash, *plus* (iv) the amount, if any, by which the Closing Net Working Capital exceeds the Net Working Capital Target, *minus* (v) the amount of Closing Indebtedness, *minus* (vi) the amount, if any, by which the Net Working Capital Target exceeds the Closing Net Working Capital, *minus* (vii) the amount of Unpaid Transaction Expenses, *plus* (viii) the Aggregate Securityholder Note Amount. For the avoidance of doubt, in no event shall any item be taken into account more than once to the extent that it is included in any of clauses (ii) through (viii) of this Section 1.9(a).

(b) Preparation and Delivery of Pre-Closing Statement. No later than three (3) Business Days prior to the Closing Date, the Company shall prepare and deliver, or cause to be prepared and delivered, to Parent a statement (the "**Pre-Closing Statement**") setting forth the Company's good faith estimate of (i) the aggregate exercise price of all In the Money Company Options, (ii) the amount of Closing Cash, (iii) the amount of Closing Net Working Capital, (iv) the amount of Closing Indebtedness, (v) the amount of Unpaid Transaction Expenses, and (vi) the Aggregate Securityholder Note Amount, together with a calculation of the Merger Consideration based on the foregoing amounts (the Merger Consideration amount so calculated being referred to herein as the "**Estimated Merger Consideration**"), as well as reasonably detailed supporting documentation for such calculation and any additional information reasonably requested by Parent. From and after the delivery of the Pre-Closing Statement until the Closing, the Company shall provide Parent and its Representatives with reasonable access to the work papers of the Company, the Company's accountants (subject to execution of customary work-paper access letters) or any of its other Representatives, in each case, related to the preparation of the Pre-Closing Statement, as well as to any of the personnel (by phone or in person, if requested), property and facilities and such books and records and other relevant information of the Company and its Subsidiaries, in each case, related to the preparation of the Pre-Closing Statement, and the Company shall make reasonably available its personnel knowledgeable about the information used in, and the preparation of, the Pre-Closing Statement and consider in good faith any comments of Parent with respect to such amounts and calculations. Prior to, and as a condition to the Closing, such amounts and calculations as finally reflected in the Pre-Closing Statement and the Payment Spreadsheet shall be reasonably acceptable to Parent. The Pre-Closing Statement, the Estimated Merger Consideration and the components thereof shall be prepared in accordance with the definitions set forth in this Agreement and the Accounting Principles (as defined below). For the avoidance of doubt, Closing Cash, Closing Net Working Capital and Closing Indebtedness shall entirely disregard

any and all effects on the assets and liabilities of the Company and its Subsidiaries of (A) purchase accounting adjustments arising from or resulting as a consequence of the consummation of the Merger and the other Transactions, (B) any financing or refinancing arrangements entered into at any time by Parent or any of its Affiliates or (C) any other transaction entered into by Parent or any of its Affiliates in connection with the consummation of the Merger and the other Transactions, including payments pursuant to Section 1.6 (*Effect of Merger on the Capital Stock of the Company and Merger Sub and Company Options*).

(c) Preparation and Delivery of Post-Closing Statement. No later than sixty (60) calendar days after the Closing Date, Parent shall prepare and deliver, or cause to be prepared and delivered, to the Seller Representative a statement (the "**Post-Closing Statement**"), setting forth Parent's good faith calculation of (i) the aggregate exercise price of all In the Money Company Options, (ii) the amount of Closing Cash, (iii) the amount of Closing Net Working Capital, (iv) the amount of Closing Indebtedness, (v) the amount of Unpaid Transaction Expenses, and (vi) the Aggregate Securityholder Note Amount, together with a calculation of the Merger Consideration based on the foregoing amounts as well as reasonably detailed supporting documentation for such calculation and any additional information reasonably requested by the Seller Representative. The Post-Closing Statement shall be prepared in accordance with GAAP as applied, to the extent in accordance with GAAP, in a manner consistent with the same accounting principles, practices, procedures, policies and methods, with consistent classifications, judgments, inclusions, exclusions and valuation and estimation methodologies that were employed in the preparation of the Audited Financial Statements, including as described in the final sentence of Section 1.9(b) (*Preparation and Delivery of Pre-Closing Statement*) (the "**Accounting Principles**"). A sample calculation of Closing Net Working Capital using the Accounting Principles is set forth on Annex J.

(d) Review of Post-Closing Statement. Parent shall provide the Seller Representative and its Representatives with reasonable access, during normal business hours and upon reasonable advance notice, to the work papers of Parent and the Surviving Corporation, Parent's accountants (subject to execution of customary work-paper access letters) or any of its other Representatives, in each case, related to the preparation of the Post-Closing Statement, as well as to any of the personnel (by phone or in person, if requested), property and facilities and such books and records and other relevant information of the Company and its Subsidiaries, in each case, related to the preparation of the Post-Closing Statement, and Parent shall make reasonably available its personnel knowledgeable about the information used in, and the preparation of, the Post-Closing Statement. The Seller Representative shall have thirty (30) days following its receipt of the Post-Closing Statement (the "**Review Period**") to review the same together with information reasonably requested in accordance with this Section 1.9(d) (which shall be provided as soon as reasonably practicable by Parent). On or before the expiration of the Review Period, the Seller Representative shall deliver to Parent a written statement accepting or disputing the Post-Closing Statement. In the event that the Seller Representative shall dispute the Post-Closing Statement, such statement shall include a detailed itemization of the Seller Representative's objections and the reasons therefor (such statement, a "**Dispute Statement**").

(c) Dispute Resolution.

(i) If the Seller Representative delivers a Dispute Statement during the Review Period, Parent and the Seller Representative shall attempt in good faith to resolve their differences with respect to the disputed items set forth in the Dispute Statement during the thirty (30) calendar days immediately following Parent's receipt of the Dispute Statement, or such longer period as Parent and the Seller Representative may mutually agree (the "**Resolution Period**"), and all such discussions related thereto shall (unless otherwise agreed in writing by Parent and the Seller Representative) be governed by Rule 408 of the Federal Rules of Evidence (as in effect as of the date of this Agreement) and any applicable similar state rule. Any such disputed items that are resolved in a writing executed by Parent and the Seller Representative during the Resolution Period shall be final and binding on the parties hereto and not subject to appeal. If Parent and the Seller Representative do not resolve all such disputed items by the end of the Resolution Period, Parent and the Seller Representative shall submit all items remaining in dispute with respect to the Dispute Statement (and only such items) to a nationally recognized independent accounting firm upon which Parent and the Seller Representative shall reasonably agree for review and resolution. If Parent and the Seller Representative are unable to so select an independent accounting firm within ten (10) Business Days following the date of the decision to submit all items remaining in dispute with respect to the Dispute Statement to such accounting firm, either Parent or the Seller Representative may thereafter request that the American Arbitration Association make such selection (as applicable, the accounting firm selected by Parent and the Seller Representative or the accounting firm selected by the American Arbitration Association is referred to as the "**Accounting Firm**").

(ii) The Accounting Firm shall make all calculations in accordance with the terms of this Agreement and the Accounting Principles, shall determine only those items identified in the Dispute Statement remaining in dispute between Parent and the Seller Representative, and shall only be permitted or authorized to determine an amount with respect to any such disputed item that is no greater than the highest and no less than the lowest of the Company's and Parent's positions on such item as applicable. The determination by the Accounting Firm shall be based solely on the written statements of Parent and Seller Representative contemplated by Section 1.9(e)(iii) (*Dispute Resolution-Engagement Process*) below and not on the Accounting Firm's independent review.

(iii) Each of Parent and the Seller Representative shall (A) enter into a customary engagement letter with the Accounting Firm at the time such dispute is submitted to the Accounting Firm and otherwise reasonably cooperate with the Accounting Firm, (B) have the opportunity to submit a written statement in support of their respective positions with respect to such disputed items, to provide supporting material to the Accounting Firm in defense of their respective positions with respect to such disputed items and to submit a written statement responding to the other party's position with respect to such disputed items (in the case of each such submission, with a copy to the other Party) and (C) subject to customary confidentiality and indemnity agreements, provide the Accounting Firm with access to their respective books, records, personnel and Representatives and such other information, in each case relating to the

disputed items, as the Accounting Firm may reasonably require in order to render its determination.

(iv) The Accounting Firm shall be instructed to deliver to Parent and the Seller Representative a written determination (such determination to include a worksheet setting forth all material calculations used in arriving at such determination and to be based solely on information provided to the Accounting Firm in writing by Parent and the Seller Representative) of the disputed items within thirty (30) calendar days of receipt of the disputed items, which determination shall be final and binding on the parties hereto and not subject to appeal.

(v) All fees and expenses relating to the work, if any, to be performed by the Accounting Firm will be allocated between Parent, on the one hand, and the Seller Representative, on the other hand, in the same proportion that the aggregate amount of the disputed items so submitted to the Accounting Firm that is unsuccessfully disputed by each such party (as finally determined by the Accounting Firm) bears to the total disputed amount of such items so submitted.

(f) Post-Closing Payments.

(i) The Merger Consideration, calculated based on (A) the aggregate exercise price of all In the Money Company Options, (B) the amount of Closing Cash, (C) the amount of Closing Net Working Capital, (D) the amount of Closing Indebtedness, (E) the amount of Unpaid Transaction Expenses and (F) the Aggregate Securityholder Note Amount, each as deemed final and binding on the parties hereto pursuant to this Section 1.9, is referred to herein as the "**Final Merger Consideration**".

(ii) If the amount of the Final Merger Consideration exceeds the amount of the Estimated Merger Consideration (such excess amount, the "**Positive Adjustment**"), then, within five (5) Business Days after the determination of the Final Merger Consideration pursuant to this Section 1.9, Parent shall (A) deposit or shall cause to be deposited in the Payment Fund held by the Paying Agent, by wire transfer of immediately available funds, an amount in cash equal to the portion of the Positive Adjustment to which the Stockholders are entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*), and (B) Parent shall deposit or shall cause to be deposited with the Surviving Corporation, by wire transfer of immediately available funds, an amount in cash as necessary to cause the Surviving Corporation to have cash on hand equal to the portion of the Positive Adjustment to which the Optionholders are entitled pursuant to Section 1.6(c) (*Effect of Merger on Company Options*).

(iii) If the amount of the Estimated Merger Consideration exceeds the amount of the Final Merger Consideration (such excess amount, the "**Negative Adjustment**"), then, within five (5) Business Days after the determination of the Final Merger Consideration pursuant to this Section 1.9, Parent and the Seller Representative shall provide a joint written instruction to the Escrow Agent to deliver promptly from the Adjustment Escrow Fund the amount of the Negative Adjustment in immediately available funds by wire transfer to an

account or accounts designated by Parent in writing, up to a maximum payment equal to the Adjustment Escrow Amount. Disbursement of funds from the Adjustment Escrow Fund in accordance with this Section 1.9 shall be the sole recourse of Parent, the Surviving Corporation or their affiliates for any claim regarding the Final Merger Consideration exceeding the Estimated Merger Consideration, except for claims of intentional fraud.

(iv) If any funds remain in the Adjustment Escrow Fund after giving effect to the adjustments and payments described in this Section 1.9(f) (such remaining amount, the "**Remaining Adjustment Escrow Fund**"), then, within five (5) Business Days after the determination of the Final Merger Consideration pursuant to this Section 1.9 and payment of all amounts payable pursuant to Section 1.9(f)(iii) (*Post-Closing Payments-Negative Adjustment*) above, Parent and the Seller Representative shall provide a joint written instruction to the Escrow Agent to (A) deposit or cause to be deposited in the Payment Fund held by the Paying Agent, by wire transfer of immediately available funds, an amount in cash equal to the portion of the Remaining Adjustment Escrow Fund to which the Stockholders are entitled pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*) and (B) deposit or cause to be deposited with the Surviving Corporation, by wire transfer of immediately available funds, an amount in cash equal to the portion of the Remaining Adjustment Escrow Fund to which the Optionholders are entitled pursuant to Section 1.6(c) (*Effect of Merger on Company Options*).

(v) Any payment made under this Section 1.9, to the maximum extent permitted by applicable Law, shall be treated for all Tax purposes as an adjustment to the Merger Consideration.

(g) The parties agree that (i) the Seller Representative may engage Ernst & Young, LLP ("**EY**") and its Affiliates to advise or represent it in connection with the matters addressed by this Section 1.9 and (ii) Parent may engage EY and its Affiliates to advise or represent it in connection with the matters addressed by this Section 1.9, *provided* that each party shall cause EY to establish a "tree" system to ensure that separate groups or "trees" will be formed and dedicated to each party and neither party shall use any individual at EY who has previously performed audit work for the Company or its Subsidiaries. Each party will enter into such reasonable and customary waivers, indemnities and other agreements as EY or its Affiliates, as the case may be, shall reasonably require to permit EY and each of its Affiliates, as the case may be, to provide such advice or representation.

1.10 **Rollover**. At any time prior to the Closing, Parent and any Stockholder may enter into an equity exchange agreement (a "**Rollover Agreement**"), in a form agreed by Parent and such Stockholder pursuant to which such Stockholder will contribute to Parent (or its designee) prior to the Closing all or a portion of such Stockholder's Company Common Stock in exchange for equity interests of Parent (or its designee) (any such shares of Company Common Stock contributed to Parent (or its designee) prior to the Closing pursuant to a Rollover Agreement, "**Rollover Shares**"). Notwithstanding anything else in this Agreement, including this ARTICLE I, the Rollover Shares held directly or indirectly by Parent as a result of the transactions contemplated by the Rollover Agreements shall automatically be canceled and retired and shall

cease to exist, and no consideration shall be delivered in exchange therefor and shall not be converted at the Effective Time into, and shall not become, the right to receive a portion of the Aggregate Closing Stockholder Proceeds as provided in Section 1.6(b) (*Effect on Company Capital Stock*) (and for the avoidance of doubt, such proceeds shall not be reallocated and no other Securityholder shall have the right to receive such proceeds); *provided*, that, (w) the Per Share Positive Adjustment attributable to the Rollover Shares, if any, payable as provided in Section 1.6(b) (*Effect on Company Capital Stock*), (x) the Per Share Adjustment Escrow Fund Consideration attributable to the Rollover Shares, if any, payable as provided in Section 1.6(b) (*Effect on Company Capital Stock*), (y) the Per Share Seller Representative Fund Consideration attributable to the Rollover Shares, if any, payable as provided in Section 1.6(b) (*Effect on Company Capital Stock*), and (z) any amounts payable in respect of such Rollover Shares under Section 4.13(j) (*Transaction Tax Deductions*), in each case, will be treated for all purposes hereunder as if such Rollover Shares were still held by the applicable Stockholder at the Effective Time, and when and if such amounts become payable hereunder, shall be paid to such Stockholder as if such Stockholder held such Rollover Shares at the Effective Time. For the avoidance of doubt, the Rollover Shares will be treated as outstanding at the Effective Time for purposes of the calculation of Fully Diluted Shares, of the Pro Rata Portion and for purposes of any calculations under Section 1.6(e) (*Post-Closing Payments*).

1.11 **Taking of Necessary Action; Further Action**. If at any time after the Effective Time, any further action is necessary or desirable to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company or to otherwise carry out the provisions of this Agreement and consummate and make effective or evidence the Transactions, then each of the Parties shall use reasonable best efforts to execute and deliver any and all things and to take such action as is necessary or desirable to vest or to perfect or confirm title to such property or rights in the Surviving Corporation or to otherwise carry out the provisions of this Agreement and consummate and make effective and evidence the Transactions.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Merger Sub, except as disclosed in the disclosure schedule (referencing the appropriate section and paragraph numbers in this ARTICLE II; *provided, however*, that any disclosure under one such section or paragraph number shall be deemed to have been disclosed for all purposes of this Agreement in respect of all such other sections and paragraph numbers to the extent that the relevance of such disclosure to such other sections and paragraph numbers is reasonably apparent on the face of such disclosure) supplied by the Company to Parent on the date of this Agreement (the "**Disclosure Schedule**") as to the matters specified in this ARTICLE II.

2.1 **Organization of the Company**. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. The Company has the requisite corporate power to own, lease and operate its properties and to carry

on its business as currently conducted. The Company is duly qualified or licensed to do business and in good standing as a foreign corporation (if applicable) in each jurisdiction in which it conducts business, except for those jurisdictions where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent a true, complete and correct copy of its certificate of incorporation, bylaws and other Organizational Documents, in each case as amended through the date hereof (collectively, the "**Company Charter Documents**"). The Company is in compliance with the Company Charter Documents in all material respects.

2.2 **Company Capital Structure**.

(a) The Company is authorized to issue [redacted] shares of Company Common Stock, [redacted] shares of which are issued and outstanding as of the date of this Agreement and there are no shares held in treasury as of the date of this Agreement. All outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and nonassessable, and not subject to preemptive or similar rights created by statute, the Company Charter Documents, or any agreement to which the Company is a party or by which it is bound, and have been issued in compliance, in all material respects, with applicable securities Laws and with the Company Charter Documents. The Company does not have any Company Common Stock subject to a repurchase option, risk of forfeiture or other vesting condition under any stock restriction or other agreement with the Company. The Company Capital Stock is held of record by the Persons with the addresses and in the amounts and represented by the certificates set forth on Section 2.2(a) of the Disclosure Schedule, as of the date hereof and as of immediately prior to the Closing, assuming no exercises by the holders of any of the outstanding Company Options listed in Section 2.2(b) of the Disclosure Schedule following the date hereof. No unpaid dividends or other distributions with respect to any shares of Company Capital Stock have been accrued and/or become due and payable. The updated Section 2.2(a) and Section 2.2(b) of the Disclosure Schedule provided pursuant to Section 5.2(d)(i) (*Certificate of the Company*) will be complete and correct as of immediately prior to the Effective Time. Except as set forth on Section 2.2(a) and Section 2.2(b) of the Disclosure Schedule, there are no shares of capital stock or other equity interests of the Company issued, reserved for issuance or outstanding.

(b) Except for the 2011 Plan, neither the Company nor any of its Subsidiaries maintains any stock option plan or other plan providing for equity compensation or "phantom" equity compensation of any Person. As of the date of this Agreement, (i) [redacted] shares of Company Common Stock are issuable, upon the exercise of outstanding, unexercised Company Options granted under the 2011 Plan and (ii) [redacted] shares of Company Common Stock are available for future grants under the 2011 Plan. All such Company Options have been issued in compliance, in all material respects, with all applicable securities Laws and the 2011 Plan. The Company has made available to Parent a complete and accurate copy of the 2011 Plan. Any repurchases or cancellations of Company Common Stock or cancellations of Company Options have been completed in accordance with the 2011 Plan and with applicable Law and without further liability to the Company or any of its Subsidiaries. Section 2.2(b) of the Disclosure Schedule sets forth a complete and correct list of all outstanding Company Options as of the date

of this Agreement, including with respect to each such award, (i) the number of shares subject to such award, (ii) the name, state and country of residence of the holder, (iii) the grant date, (iv) whether the award was intended as of its date of grant to be an "incentive stock option" under Section 422 of the Code or a non-qualified stock option, (v) the exercise or purchase price per share, (vi) the vesting schedule and vested status of each such award as of the date of this Agreement, and (vii) the expiration date of each such award.

(c) The Company has not granted any options to purchase shares of the Company Common Stock outside of the 2011 Plan. Except for the Company Options, there are no options, warrants, calls, puts, subscriptions, convertible securities, rights, arrangements, commitments or agreements of any character, written or oral, to which the Company or any of its Subsidiaries is a party or by which it is bound, obligating the Company or any of its Subsidiaries to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or any of its Subsidiaries. There are no outstanding or authorized stock appreciation rights, conversion rights, stock unit, phantom stock, profit participation or other similar rights with respect to the Company or any of its Subsidiaries.

2.3 **Subsidiaries**.

(a) Section 2.3(a) of the Disclosure Schedule sets forth a complete and correct list of each Subsidiary of the Company, its place of incorporation or formation, its outstanding equity interests and the owners of all of its outstanding equity interests (and the amount and class of equity interests owned by each such Person). Except for its Subsidiaries, the Company and its Subsidiaries do not own, directly or indirectly, any shares of capital stock of, or any other equity or voting interest in, any other corporation, partnership, association, joint venture or other Person. All of the outstanding shares of capital stock of, or other equity or voting interests in, each Subsidiary of the Company have been validly issued and are fully paid and nonassessable and are owned directly or indirectly by the Company, free and clear of all Liens (other than Permitted Liens), except for restrictions imposed by applicable securities Laws. No Person other than the Company or one of its other Subsidiaries owns any outstanding shares of capital stock of, or other equity or voting interests in, any Subsidiary of the Company. There are no outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote with the holders of the capital stock or other equity interests or securities of any Subsidiary of the Company on any matter.

(b) Each Subsidiary of the Company is a legal entity duly organized, validly existing and in good standing (to the extent such concept is applicable) under the Laws of the respective jurisdiction of its incorporation or formation. Each Subsidiary of the Company has the corporate or similar power and authority to own, lease and operate its properties and to carry on its business as currently conducted. Each Subsidiary of the Company is duly qualified or licensed to do business and in good standing as a foreign corporation or other legal entity (if applicable) in each jurisdiction in which it conducts business, except for those jurisdictions where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent

a true, complete and correct copy of the certificate of incorporation and bylaws, or like Organizational Documents, of each of its Subsidiaries, in each case, as amended through the date hereof (collectively, the "**Subsidiary Charter Documents**"). Each Subsidiary of the Company is in compliance with its applicable Subsidiary Charter Documents in all material respects.

2.4 **Authority**. The Company has the requisite corporate power and authority to enter into and deliver this Agreement and to perform its obligations hereunder (including the consummation by the Company and its Subsidiaries of the Transactions), subject to (in the case of the Merger) the receipt of the Requisite Stockholder Approval. The execution and delivery by the Company of this Agreement and the performance by the Company of its obligations under this Agreement (including the consummation by the Company of the Transactions) have been duly authorized by all necessary corporate action on the part of the Company (including by its board of directors and for all purposes under any of the Company Charter Documents), and no other corporate proceedings on the part of the Company or Securityholder approvals (other than the Requisite Stockholder Approval) are necessary to authorize the execution or delivery by the Company of this Agreement or the performance by the Company of its obligations under this Agreement (including the consummation by the Company of the Transactions), subject to (in the case of the Merger) the receipt of the Requisite Stockholder Approval. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be subject to (a) the Laws of general application relating to bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting or relating to creditors' rights generally and (b) general principles of equity.

2.5 **No Conflict**. Assuming (i) the receipt of the Requisite Stockholder Approval and (ii) the receipt or making of the consents, waivers, approvals, orders, authorizations, registrations, declarations and filings specified in Section 2.6 (*Governmental Consents*), the execution and delivery by the Company of this Agreement and the Related Agreements do not, and the performance by the Company or any of its Subsidiaries of its obligations under this Agreement and the Related Agreements (including the consummation by the Company of the Transactions) will not, conflict with, result in any breach or violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation, payment of any benefit, or loss of any benefit, result in the creation of any material Lien upon the Company or any of its Subsidiaries or any of their properties, rights or assets, or require any notice or approval (any such event, a "**Conflict**") under (a) any provision of the Company Charter Documents or the Subsidiary Charter Documents, (b) any Company Material Contract or Company Employee Plan, or (c) any Law or Order applicable to the Company or any of its Subsidiaries or any of their properties or assets, except, in the case of clauses (b) and (c) above, for such Conflicts which would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

2.6 **Governmental Consents**. No consent, waiver, approval, notice, order or authorization of, or registration, declaration or filing with, any Governmental Authority, is

required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery by the Company of this Agreement or the performance by the Company or any of its Subsidiaries of its obligations under this Agreement (including the consummation by the Company of the Transactions), except for (a) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, (b) the applicable requirements of the HSR Act or under any other Antitrust Laws set forth on Section 2.6(b) of the Disclosure Schedule and the expiration or termination of the applicable waiting periods thereunder, (c) the applicable FCC consents and State PUC consents and notices set forth on Section 2.6(c) of the Disclosure Schedule, and (d) any filings required by applicable securities Laws.

2.7 **Company Financial Statements**. The Company has made available to Parent (a) the audited consolidated balance sheets of the Company and its Subsidiaries, as of each of December 31, 2014 and December 31, 2015 and the related audited consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for each twelve month period then ended (the "**Audited Financial Statements**"), and (b) the unaudited consolidated balance sheets of the Company and its Subsidiaries, as of June 30, 2016 and the related unaudited consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for the six month period then ended (the "**Unaudited Financial Statements**" and together with all of the foregoing financial statements, including any notes thereto, the "**Financial Statements**"). The Financial Statements have been prepared in accordance with GAAP in the United States consistently applied throughout the periods indicated (except as indicated in any notes thereto and that the unaudited Financial Statements do not contain notes thereto otherwise required by GAAP and are subject to year-end audit adjustments, which are not expected to be individually or in the aggregate, material). The Financial Statements present fairly in all material respects the consolidated financial positions, cash flows and results of operations of the Company and its Subsidiaries as of the respective dates indicated thereon and the consolidated operating results of the Company and its Subsidiaries during the periods indicated therein, in each case in accordance with GAAP and subject in the case of unaudited Financial Statements to year-end audit adjustments (which are not expected to be, individually or in the aggregate, material). The Company's balance sheet as of June 30, 2016 is referred to hereinafter as the "**Current Balance Sheet**."

2.8 **No Undisclosed Liabilities**. Neither the Company nor any of its Subsidiaries has any liabilities that are required to be reflected in a balance sheet prepared in accordance with GAAP, except for liabilities which (a) have been reflected or reserved against in the Financial Statements or disclosed in the notes thereto, (b) have arisen in the ordinary course of business since the date of the Current Balance Sheet (none of which arise from any breach or default under any Contract, breach of warranty, tort, infringement, misappropriation, or violation of Law) or in connection with the authorization, preparation, negotiation, execution or performance of this Agreement or the consummation of the Transactions, (c) are executory obligations under the Contracts of the Company or its Subsidiaries (none of which arise from any breach or default under any such Contract), or (d) would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole.

2.9 **No Changes**.

(a) Since the date of the Current Balance Sheet to and including the date of this Agreement, except in connection with the authorization, preparation, negotiation, execution or performance of this Agreement or the consummation of the Transactions, the Company and its Subsidiaries have operated in all material respects in the ordinary course of business, and have not taken any action which if taken during the Pre-Closing Period would be prohibited by Section 4.1(b) (*Conduct of Business of the Company*).

(b) Since the date of the Current Balance Sheet to and including the date of this Agreement, there has or have not been, occurred or arisen any Company Material Adverse Effect that is continuing.

2.10 **Compliance with Laws**. The Company and its Subsidiaries are, and for the past eighteen (18) months, and to the Knowledge of the Company for the past three (3) years, have been, in compliance in all material respects with all applicable Laws. Except as set forth in Section 2.10 of the Disclosure Schedule, the Company and its Subsidiaries have not received any written or, to the Knowledge of the Company, oral notice from any Governmental Authority during the past eighteen (18) months, and to the Knowledge of the Company during the past three (3) years, to the effect that the Company or any of its Subsidiaries is not or has not been in material compliance with any applicable Laws or Orders.

2.11 **Compliance with FCC and State PUC Laws**. There is no and for the past eighteen (18) months, and to the Knowledge of the Company for the past three (3) years, prior to the date of this Agreement, there has been no governmental inquiry or investigation pending (to the extent the Company has received any notice of such pending inquiry or investigation) or, to the Knowledge of the Company, threatened against the Company, any of its Subsidiaries with respect to the qualification of the Company or any of its Subsidiaries to hold any required approvals from the FCC or any State PUC or compliance with any Law or Order promulgated by the FCC or any State PUC.

2.12 **Compliance with Anti-Corruption Laws**. The Company, its Subsidiaries and, to their Knowledge, their respective Representatives are, and during the three (3) years prior to the date of this Agreement have been, in compliance with the provisions of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. § 78dd-1, et seq.) ("**FCPA**"), U.S. Travel Act, U.K. Bribery Act of 2010, Organization of Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and all applicable anti-bribery, anti-corruption and anti-money laundering laws (collectively hereinafter the "**Anti-Corruption Laws**") and have not:

(a) paid, offered or promised to pay, or authorized or ratified the payment, directly or indirectly, of any monies or anything of value to any domestic, local, national, provincial, municipal or other government official, "foreign official", as defined by the FCPA including any political party or official thereof, any candidate for political office, any employee, official, or agent of a public international organization, or any other Person for the purpose of

corruptly influencing any act or decision of such person to obtain or retain business, direct business to any person, or to secure any other benefit or advantage in each case in violation of the Anti-Corruption Laws;

(b) made, attempted or conspired to pay any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment to any person; or

(c) received any notice of any claims, charges, proceedings, investigations, violations, settlements, civil or criminal enforcement actions, lawsuits, or other court, governmental or private actions with respect to any alleged violation of the Anti-Corruption Laws.

The Company has disclosed to Parent its material policies and procedures with respect to the Anti-Corruption Laws.

2.13 **Export Controls**. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries, nor any of their respective officers, directors, employees, agents or other third-party representatives authorized to act on behalf of the Company or any of its Subsidiaries is currently, or has been in the last three (3) years: (i) a Sanctioned Person, (ii) organized, resident or located in an Embargoed Country, (iii) engaging in any dealings or transactions with any Sanctioned Person or in any Embargoed Country, to the extent such activities violate applicable Sanctions Laws or Ex-Im Laws, or (iv) otherwise in violation of applicable Sanctions Laws, Ex-Im Laws, or the anti-boycott Laws administered by the U.S. Department of Commerce and the U.S. Department of Treasury's Internal Revenue Service (collectively, "**Trade Control Laws**"). Since the date that is three (3) years prior to the date of this Agreement, neither the Company nor any of its Subsidiaries has, in connection with or relating to the business of the Company or any of its Subsidiaries, received from any Governmental Authority or any other Person any notice, inquiry, or internal or external allegation, made any voluntary or involuntary disclosure to a Governmental Authority, or conducted any internal investigation or audit concerning any actual or potential violation or wrongdoing related to Trade Control Laws.

2.14 **Permits**. Section 2.14 of the Disclosure Schedule sets forth each material Permit which is required for the operation of the Company's or any of its Subsidiaries' business as currently conducted (collectively, the "**Company Permits**"), and each Company Permit has been issued or granted to the Company or such Subsidiary and is in full force and effect. The Company and its Subsidiaries are, and for the past eighteen (18) months, and to the Knowledge of the Company for the past three (3) years, have been, in compliance in all material respects with all such Company Permits. There is no, and during the preceding three (3) years there has been no, suspension, cancellation, revocation or nonrenewal of any Company Permit pending or, to the Knowledge of the Company threatened.

2.15 **Actions; Orders**. Except as set forth in Section 2.15 of the Disclosure Schedule, there is no, and during the three (3) years prior to the date of this Agreement there has been no, Action by or before any Governmental Authority pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries or any of their respective directors,

officers or employees in their capacities as such that individually is, or in the aggregate with other such Actions are, material to the Company and its Subsidiaries, taken as a whole. Neither the Company nor any of its Subsidiaries is, or has during the preceding three (3) years prior to the date of this Agreement been, subject to any material Order.

2.16 **Contracts**.

(a) Section 2.16(a) of the Disclosure Schedule lists, as of the date of this Agreement, each of the currently effective Contracts of the following categories of Contracts to which the Company or any of its Subsidiaries is a party or by which they are legally bound (other than Company Employee Plans listed on Section 2.20(a) of the Disclosure Schedule):

(i) any Lease Agreements involving Leased Real Property;

(ii) any Contract that the Company reasonably anticipates will involve aggregate payments by the Company or any of its Subsidiaries in excess of five hundred thousand dollars ($500,000) per year;

(iii) any Contract that the Company reasonably anticipates will involve aggregate payments to the Company or any of its Subsidiaries in excess of five hundred thousand dollars ($500,000) per year;

(iv) any Contract relating to the acquisition or divestiture of any business enterprise or division thereof (whether by merger, consolidation, sale of stock, sale of assets or otherwise) material to the Company and its Subsidiaries or containing any "earn-out" or other similar payment obligations;

(v) any Contract relating to the sale, lease, conveyance or other disposition of material assets of the Company and its Subsidiaries and containing executory obligations that are material to the Company and its Subsidiaries, taken as a whole;

(vi) any Contract that relates to the formation, creation, operation, management or control of any legal partnership or any joint venture or similar entity;

(vii) any Contract relating to Indebtedness, letters of credit, performance bonds, bankers' acceptances, surety bonds or similar facilities of the Company or any of its Subsidiaries or a guaranty of the Indebtedness of any other Person;

(viii) any Contract under which the Company or any of its Subsidiaries has been granted a license to any Company Licensed Intellectual Property, other than (A) Contracts with Employees or individual independent contractors for the assignment of, or license to, Intellectual Property Rights entered in to in the ordinary course of business, (B) confidentiality or nondisclosure Contracts entered into in the ordinary course of business; (C) Contracts entered into in the ordinary course of business that (x) are not material to the Company and its Subsidiaries, taken as a whole, (y) do not involve licenses of or to patents or software in

source code form (other than Open Source Materials), and (z) will not affect the Company's or any of its Subsidiaries' ability to use or enforce the Company Intellectual Property, except with respect to the applicable contractual counterparty; (D) Contracts that are ancillary to the purchase or use of commodity hardware (e.g., desktop computers and servers); and (E) Contracts for Shrink Wrap Code;

(ix) any Contract under which the Company or any of its Subsidiaries has licensed any Company Intellectual Property to a third Person, other than (A) Contracts for Company Products formed pursuant to one of the Company's standard Contracts (or in a form substantially similar to, or with provisions with substantially similar legal effect as the provisions of, one of such forms); (B) nonexclusive licenses that (x) are immaterial to the Company and its Subsidiaries, taken as a whole, (y) do not involve licenses of or to patents or software in source code form, and (z) will not affect the Company's or any of its Subsidiaries' ability to use or enforce the Company Intellectual Property, except with respect to the applicable contractual counterparty; and (C) confidentiality or nondisclosure Contracts entered into in the ordinary course of business;

(x) any Contract that limits in any material manner the ability of the Company or any of its Subsidiaries to compete in any line of business or with any Person or in any geographic area;

(xi) any Contract that (A) contains most favored customer pricing provisions with any third party, (B) grants any exclusive rights, rights of first refusal, rights of first negotiation or similar rights to any Person or (C) requires the Company or its Subsidiaries to satisfy a minimum purchase obligation;

(xii) any Contract, or group of Contracts with a Person (or group of affiliated Persons), the termination or breach of which would reasonably be expected to have a Company Material Adverse Effect;

(xiii) any Contract to which the Company or any of its Subsidiaries is a party for the employment or retention of any Employee or individual service provider, on a full-time, part-time or consulting basis, which includes aggregate annual target cash compensation in excess of $325,000 per year or which is not terminable by, as applicable, the Company or any of its Subsidiaries on no more than ninety (90) days' notice without incurring severance or other costs or liabilities;

(xiv) any equity purchase, option or similar plan;

(xv) any Collective Bargaining Agreement;

(xvi) any Contract that is a settlement, conciliation, or similar agreement to resolve an Action (a) with any Governmental Authority, (b) in the past three (3) years, where the settlement amount exceeds $200,000 or (c) that imposes any material obligation or that

requires the payment of monies by the Company or any of its Subsidiaries after the date of this Agreement;

(xvii) any Contract that obligates the Company or its Subsidiaries to make any capital expenditure or capital investment in excess of $500,000;

(xviii) any Contract that provides for or obligates the Company or any of its Subsidiaries to indemnify, hold harmless or defend any Person (including any officers, directors, members, managers, partners, employees or agents of the Company or any of its Subsidiaries), other than Contracts the primary purpose of which is not related to the indemnification of any Person; or

(xix) any Contract with any Securityholder, officer or director of the Company or any of its Subsidiaries or any Affiliate of any of the foregoing.

(b) The Company has made available true and complete copies of each Contract (together with all currently effective amendments thereto) disclosed pursuant to Section 2.16(a) (*Contracts*) (such Contracts disclosed or required to be disclosed pursuant to Section 2.16(a) (*Contracts*), the "**Company Material Contracts**"). Neither the Company nor any of its Subsidiaries is in breach or default thereunder, nor to the Knowledge of the Company is any other party to any such Company Material Contract in breach or default thereunder, except, in each case, for any such breach or default that is not material to the Company and its Subsidiaries, taken as a whole. Assuming the due authorization, execution and delivery by the other parties thereto, each Company Material Contract is in full force and effect and constitutes the valid and binding obligation of the Company and the other parties thereto, enforceable against the Company and the other parties thereto in accordance with its terms, except as such enforceability may be subject to (i) the Laws of general application relating to bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting or relating to creditors' rights generally and (ii) general principles of equity. Neither the Company nor any of its Subsidiaries has received any written, or, to the Knowledge of the Company, oral notice of the intention of any Person to terminate any Company Material Contract or to adversely modify the terms thereof in a manner material to the Company and its Subsidiaries taken as a whole.

2.17 **Intellectual Property**.

(a) Section 2.17(a) of the Disclosure Schedule lists all Company Products that the Company or any of its Subsidiaries markets, sells or licenses as of the date of this Agreement.

(b) Section 2.17(b) of the Disclosure Schedule lists, as of the date of this Agreement, all Company Registered Intellectual Property, including: (i) all registered trademarks and trademark applications; (ii) all patents and patent applications, (iii) all domain names, and (iv) all registered copyrights and copyright applications, in each case listing, as applicable, (A) the name of the applicant/registrant and current owner, (B) the jurisdiction where the application/registration is located, (C) the status of such application/registration, and (D) the

application or registration number. To the Knowledge of the Company, each item of Company Registered Intellectual Property is subsisting, valid and, except with respect to applications and domain names, enforceable. There is no pending or, to the Knowledge of the Company, threatened claim challenging the validity or enforceability of, or contesting the Company's or any of its Subsidiaries' rights with respect to, any of the Company Registered Intellectual Property. All documents and instruments necessary to establish, perfect and maintain the rights of the Company and its Subsidiaries in each item of Company Registered Intellectual Property have been executed, delivered and filed in a timely manner with the appropriate Governmental Authority, except for such items of Company Registered Intellectual Property which the Company or its Subsidiaries have determined to abandon in their reasonable business discretion.

(c) In each case in which the Company or any of its Subsidiaries has acquired or has purported to acquire ownership of any Intellectual Property Rights from another Person, the Company or one of its Subsidiaries has obtained, either by operation of law or by a valid written assignment (by way of a present grant assignment), a transfer of all rights in and to all such Intellectual Property Rights to the Company or such Subsidiary, as applicable.

(d) The Company and its Subsidiaries (i) exclusively own all right, title and interest in and to the Company Intellectual Property and (ii) to the Knowledge of the Company, own all right, title, and interest in and to, or is licensed or otherwise possesses the valid right to use, all other Intellectual Property Rights and Technology used in or necessary for the conduct of their respective businesses, *provided, however* that the foregoing is not a representation of non-infringement, which is solely set forth in Section 2.17(f) (*Intellectual Property-Infringement*), and in each case, free and clear of all Liens (other than Permitted Liens).

(e) The Company and its Subsidiaries have taken reasonable measures to maintain the Company's and its Subsidiaries' trade secrets. Without limiting the foregoing, the Company and its Subsidiaries have a policy requiring all Company Employees and consultants engaged in the creation of any Technology material to the business of the Company or any of its Subsidiaries to execute a confidentiality and invention assignment agreement substantially in the Company's standard form(s).

(f) To the Knowledge of the Company, neither the Company Products nor the operation of the Company's or its Subsidiaries' business as currently conducted as of the date of this Agreement by the Company and its Subsidiaries is infringing upon or otherwise misappropriating the Intellectual Property Rights of any other Person, except for any such infringement or misappropriation that would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

(g) To the Knowledge of the Company, no Person (i) is infringing upon, misappropriating or otherwise violating, and (ii) during the thirty six (36) months prior to the date of this Agreement, has infringed upon, misappropriated, or otherwise violated, any Company Intellectual Property.

(h) As of the date of this Agreement, there is no Action pending or, to the Knowledge of the Company, threatened in writing during the thirty six (36) months prior to the date of this Agreement, in either case against the Company or any of its Subsidiaries with respect to any alleged infringement or other misappropriation by the Company or any of its Subsidiaries of the Intellectual Property Rights of a third Person.

(i) Neither the Company nor any of its Subsidiaries has incorporated in or distributed with any Company Product any third party Open Source Material in a manner that imposes or could impose a requirement or condition that any of the Company's or any of its Subsidiaries' proprietary software in a Company Product or part thereof (except for the applicable third party Open Source Material itself): (1) be disclosed or distributed in source code form in the case of software; (2) be licensed for the purpose of making modifications or derivative works; or (3) be redistributable at no charge.

(j) The computer, information technology and data processing systems, telecommunications, networks, peripherals, platforms, facilities and services (i) owned by or operated under the supervision and control of the Company and its Subsidiaries (collectively, the "**Company Systems**") or (ii) operated on behalf of the Company and its Subsidiaries, are in each case reasonably sufficient for the current needs of the business of the Company and its Subsidiaries. To the Knowledge of the Company, during the thirty-six (36) months prior to the date of this Agreement, there has been no actual security breach of or actual intrusion into any Company System, or any other facility or system on which Personal Data, payment card information or confidential data is held or stored on behalf of the Company or any of its Subsidiaries, in which any such Personal Data, payment card information or confidential data held or stored by or on behalf of the Company or any of its Subsidiaries actually has been acquired or exfiltrated by an unauthorized Person. The Company has made available a list of known material bugs and defects in Company Products current as of August 23, 2016. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries have input into the Company Products any malicious computer code or programs designed to cause harm to such Company Products.

(k) The Company has not accepted any funding, facilities or personnel of any Governmental Authority for use to develop or create, in whole or in part, any Company Intellectual Property.

(l) The Company and its Subsidiaries are in compliance in all material respects with their posted privacy policies. Except as would not be material to the Company and its Subsidiaries, taken as a whole, the Company and its Subsidiaries (i) are in compliance with all applicable Laws governing their collection, maintenance, storage, processing, disclosure, transfer, and disposal of Personal Data; (ii) are in compliance with the Payment Card Industry Data Security Standard; and (iii) collect, maintain, store, process, transfer, and dispose of Personal Data using commercially reasonable data security measures. As of the date of this Agreement, during the past twelve (12) months, except as would not be material to the Company and its Subsidiaries, taken as a whole, (i) to the Knowledge of the Company, there has been no

(A) claim against the Company or any of its Subsidiaries from any affected individual or (B) request to the Company or any of its Subsidiaries from, or inspection of the Company or any of its Subsidiaries by, any Governmental Authority or industry association, that in the case of (A) or (B), has given rise to, or would be reasonably likely to give rise to, any liability under applicable Laws or applicable binding industry regulation in relation to data protection, data security or privacy, and (ii) no penalties have been imposed on the Company or any of its Subsidiaries for noncompliance with applicable Laws or applicable binding industry regulation in relation to data protection, data security or privacy.

2.18 **Real Property; Absence of Liens on Tangible Property**.

(a) Neither the Company nor any of its Subsidiaries owns any real property. Section 2.18(a) of the Disclosure Schedule lists all real property currently leased or subleased by the Company or any of its Subsidiaries or otherwise used or occupied by the Company or any of its Subsidiaries (the "**Leased Real Property**"), including the addresses of such Leased Real Property. The Company has made available to Parent true and complete copies of all leases, lease amendments, lease guaranties, extensions, renewals, licenses, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in the Leased Real Property (collectively, the "**Lease Agreements**"). In the case of any oral Lease Agreements, the Company has provided a written summary of the material terms of such Lease Agreement. Except as set forth in Section 2.18(a) of the Disclosure Schedule, with respect to each of the Lease Agreements: (i) the Company's or Subsidiary's possession and quiet enjoyment of the Leased Real Property under such Lease Agreement has not been disturbed in any material respect; (ii) the Company or Subsidiary has not subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof; and (iii) the Company or Subsidiary has not collaterally assigned or granted any other security interest in such Lease Agreement or any interest therein.

(b) The Company and each of its Subsidiaries has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its material tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of all Liens, except for Permitted Liens. To the Knowledge of the Company, as of the date of this Agreement, all such material tangible properties and assets are in good operating condition and repair, ordinary wear and tear excepted.

(c) To the Knowledge of the Company, all buildings, structures, improvements, fixtures, building systems and equipment, and all components thereof, included in the Leased Real Property and material to the conduct of the Company's business at such Leased Real Property (the "**Improvements**") are in good condition and repair, ordinary wear and tear excepted, and sufficient for the operation of the Company.

2.19 **Tax Matters**.

(a) The Company and each of its Subsidiaries has prepared and timely filed all federal, state, local and non-U.S. Tax Returns relating to any and all Taxes concerning or

attributable to the Company, its Subsidiaries or their operations, and such Tax Returns are true and correct in all material respects and were prepared in substantial compliance with applicable Law.

(b) The Company and each of its Subsidiaries has timely paid all Taxes it is required to pay, whether or not shown or reportable on any Tax Return, and has withheld with respect to Employees and other Persons (and timely paid over to the appropriate Tax Authority) all federal, state and non-U.S. income Taxes and social security charges and similar fees, Federal Insurance Contribution Act, Federal Unemployment Tax Act and other Taxes required to be withheld.

(c) Neither the Company nor any of its Subsidiaries has been delinquent in the payment of any Tax, nor is there any Tax deficiency outstanding, assessed or proposed against the Company or any of its Subsidiaries in writing, nor has the Company or any of its Subsidiaries executed or otherwise consented to any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(d) No audit, assessment, examination or other action with respect to Taxes of the Company or any of its Subsidiaries is presently pending or in progress, nor has the Company or any of its Subsidiaries been notified by any Tax Authority (including in jurisdictions where the Company or any of its Subsidiaries has not filed a Tax Return) of any threat or plan to request such an audit, assessment, examination or other action.

(e) Neither the Company nor any of its Subsidiaries has any material liabilities for unpaid federal, state, local or non-U.S. Taxes that have not been accrued or reserved on the Current Balance Sheet in accordance with GAAP.

(f) There are no Liens on the assets of the Company or any of its Subsidiaries relating to or attributable to Taxes other than Permitted Liens.

(g) Neither the Company nor any of its Subsidiaries is (i) a member of an affiliated group (within the meaning of Section 1504(a) of the Code) filing a consolidated federal income Tax Return (other than a group the common Parent of which was the Company), (ii) a party to any Tax sharing, indemnification or allocation agreement (other than commercial agreements entered into in the ordinary course of business, the primary purpose of which is not Tax-related), (iii) subject to any liability for the Taxes of any Person (other than Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Tax Law), as a transferee or successor, by Contract or otherwise, or (iv) a party to any joint venture, partnership or other arrangement that, to the Knowledge of the Company, could be treated as a partnership for Tax purposes.

(h) Neither the Company nor any of its Subsidiaries has been, at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(i) There are no Tax rulings, requests for rulings, or "closing agreements" (as described in Section 7121 of the Code or any corresponding provision of state, local or non-U.S. Tax Law) relating to the Company or any of its Subsidiaries which could affect the Company's or any of its Subsidiaries' liability for Taxes for any period after the Closing Date. Neither the Company nor any of its Subsidiaries (i) has since 2011 changed any method of accounting for Tax purposes or (ii) will be required to make any adjustment under Section 481 of the Code (or any corresponding provision of state, local or non-U.S. Tax Law) or for any period ending after the Closing Date. Since 2011, neither the Company nor any of its Subsidiaries has used the cash method of accounting for Tax purposes.

(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) beginning after the Closing Date as a result of any (i) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax law); (ii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; (iv) prepaid amount received on or prior to the Closing Date; (v) election under Section 108(i) of the Code; or (vi) transaction entered into or investment made prior to the Closing Date governed by Section 951(a) of the Code.

(k) Neither the Company nor any of its Subsidiaries is a resident for Tax purposes, has a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a country other than the country in which it is organized.

(l) Neither the Company nor any of its Subsidiaries has distributed capital stock of another Person, or has had its capital stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code in the two (2) years prior to the date of this Agreement.

(m) Neither the Company nor any of its Subsidiaries has engaged in a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a Tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction, as set forth in Treasury Regulation Section 1.6011-4(b)(2).

(n) Each agreement, contract, plan or other arrangement that is a "nonqualified deferred compensation plan" subject to Section 409A of the Code to which the Company or any of its Subsidiaries is a party (collectively, a "**Plan**") materially complies with and has been maintained in all material respect in accordance with the requirements of Section 409A of the Code and any U.S. Department of Treasury or Internal Revenue Service guidance issued thereunder and no amounts under any such Plan is or has been subject to the interest and additional tax set forth under Section 409A(a)(1)(B) of the Code. Neither the Company nor any of its Subsidiaries has any actual or potential obligation to reimburse or

otherwise "gross-up" any Person for the interest or additional tax set forth under Sections 409A(a)(1)(B) or 4999 of the Code

(o) No Subsidiary organized outside of the United States (i) is a passive foreign investment company within the meaning of Section 1297 of the Code, (ii) has since 2011 incurred a material amount of Subpart F income within the meaning of Section 952(a) of the Code or (iii) has since 2011 made any investment in "United States property" within the meaning of Section 956(c) of the Code and the Treasury Regulations thereunder.

(p) No power of attorney has been executed with respect to any Taxes owed by the Company or any of its Subsidiaries which is currently in force.

(q) The Company and each of its Subsidiaries has properly (i) collected and remitted sales and similar Taxes with respect to sales made to its customers and (ii) for all sales that are exempt from sales and similar Taxes and that were made without charging or remitting sales or similar Taxes, received and retained any Tax exemption certificates and other documentation required by Law to be received and retained in order to qualify such sale as exempt.

(r) Each of the Company and its Subsidiaries has correctly classified those individuals performing services as independent contractors or agents of the Company or any of its Subsidiaries.

(s) If the Company or any Subsidiary is required to register for value added tax ("**VAT**") in any jurisdiction, it is so registered in each such applicable jurisdiction and has complied with all statutory provisions, rules, regulations, orders and directions in respect of any VAT or similar tax on consumption, maintains such records as are required by Law, and has not in the period of six years ending with the Closing Date been subject to any material interest, forfeiture, surcharge or penalty and none is or has been in the period of six years ending with the Closing Date a member of a group or consolidation with any other company for purposes of VAT.

(t) All related party transactions involving the Company and/or any Subsidiary (including any branch or permanent establishment thereof) comply with the principles set forth in Section 482 of the Code and Treasury Regulations promulgated thereunder (and any corresponding provisions of state, local or non-U.S. Tax law) and any other applicable law on transfer pricing, and the Company and its Subsidiaries have maintained such records as are required by Law with respect to transfer pricing required to avoid the imposition of penalties.

2.20 **Employee Benefit Plans and Compensation**.

(a) Schedule. Section 2.20(a) of the Disclosure Schedule lists each material Company Employee Plan. Neither the Company nor any of its Subsidiaries or ERISA Affiliates has made any plan or commitment (whether written or oral) to establish, adopt or enter into any

new material Company Employee Plan, or to modify any material Company Employee Plan (except to the extent required by Law).

(b) Documents. With respect to each material Company Employee Plan, the Company has made available to Parent to the extent applicable: (i) the most recent annual report on Form 5500 required to have been filed with the IRS, including all schedules and attachments thereto; (ii) the most recent determination letter or opinion, if any, from the IRS for any such Company Employee Plan that is intended to qualify under Section 401(a) of the Code; (iii) the plan documents and summary plan descriptions, or a written description of the terms of any such Company Employee Plan that is not in writing, in each case, except for (x) offer letters for employees with annual target cash compensation less than $325,000 that provide for at-will employment, can be terminated without material cost or material liability to Parent and its Subsidiaries, and do not provide severance or termination benefits, (y) individual consulting agreements for individuals with annual cash payments less than $200,000 that can be terminated without material cost or material liability to Parent and its Subsidiaries, and (z) Company Option Agreements, in which case only forms of such agreements have been made available to Parent, unless such individual agreements materially differ from those forms; (iv) any related trust agreements, insurance contracts, insurance policies or other documents of any funding arrangements; and (v) any notices to or from the IRS or U.S. Department of Labor or other Governmental Authority relating to any compliance operation or administration issues in respect of any such Company Employee Plan, other than routine correspondence with such Governmental Authority.

(c) Employee Plan Compliance. Each Company Employee Plan has been established, funded and maintained in accordance, in all material respects, with its terms and applicable Laws, and no act or omission has occurred and no condition exists with respect to any Company Employee Plan that would subject the Company any of its Subsidiaries or Parent to any material fine, penalty, Tax or other liability imposed under ERISA, the Code or other applicable Law. The Company and its Subsidiaries and ERISA Affiliates have performed all material obligations required to be performed by them under each Company Employee Plan. Each Company Employee Plan intended to be qualified under Section 401(a) of the Code has timely obtained a favorable determination or opinion letter from the IRS that the Company Employee Plan and, to the Company's Knowledge, is currently entitled to rely upon and no fact or event has occurred that would reasonably be expected to adversely affect such qualified status or tax exempt status of such plan. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Employee Plan. There are no Actions pending or, to the Knowledge of the Company, threatened (other than routine claims for benefits and administrative expenses) against any Company Employee Plan or the assets thereof. As of the date of this Agreement, there are no audits, inquiries or proceedings pending or, to the Knowledge of the Company, threatened by the IRS, U.S. Department of Labor or any other Governmental Authority with respect to any Company Employee Plan that are material to the Company and its Subsidiaries, taken as a whole. Except as set forth on Section 2.20(c) of the Disclosure Schedule, the Company and its Subsidiaries and ERISA Affiliates are not subject to

any penalty or Tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code, nor to the Knowledge of the Company, has any Employee committed any breach of fiduciary duty imposed by Title I of ERISA. The Company and its Subsidiaries and ERISA Affiliates have timely made all contributions and other payments required by and due under the terms of each Company Employee Plan and applicable Law, except as would not reasonably be likely to result in material liability to the Company or its Subsidiaries, taken as a whole, and all contributions for any period ending on or before the Closing Date that are not yet due have been made or properly accrued in accordance with GAAP

(d) No Pension Plans, Etc. The Company and its Subsidiaries and ERISA Affiliates do not maintain, establish, sponsor, participate in, or contribute to, or have any liability with respect to any (i) Employee benefit plan subject to Section 412 of the Code or Title IV of ERISA (ii) "multiemployer plan" within the meaning of Section (3)(37) of ERISA, (iii) "multiple employer plan" within the meaning of Sections 4063 or 4064 of ERISA (in each case under clause (ii) and (iii), whether or not subject to ERISA), (iv) "multiple employer welfare arrangement" (as such term is defined in Section 3(40) of ERISA), or (v) a "funded welfare plan" within the meaning of Section 419 of the Code. No Company Employee Plan provides health or disability benefits that are not fully insured through an insurance Contract.

(e) No Post-Employment Obligations. No Company Employee Plan provides post-termination or retiree life insurance, health or other retiree Employee welfare benefits and payments connected with termination, retirement, illness, disablement or death to any Person for any reason, except as may be required by COBRA or other applicable Law the full cost of which is paid by participants.

(f) Effect of Transaction. The execution of this Agreement and the consummation of the Transactions will not (either alone or upon the occurrence of any additional or subsequent events, including termination of employment) result in (i) any payment (whether of severance pay or otherwise), acceleration, funding, forgiveness of indebtedness, vesting, distribution, increase in the amount or value of payments or benefits or obligation to fund payments or benefits, (ii) the payment of any amount that may be deemed an "excess parachute payment" under Section 280G of the Code with respect to any Employee or individual service provider or (iii) a Tax under Section 409A of the Code with respect to any Employee or individual service provider. There is no Contract to which the Company or any of its Subsidiaries is a party or by which any of them is bound to compensate any Employee for excise Taxes paid pursuant to Section 4999 or 409A of the Code.

(g) Non-Employee Classification. Any individual who performs services for the Company or any of its Subsidiaries and who is not treated as an employee for federal income tax purposes by the Company or its Subsidiaries is not an employee under applicable Law or for any purpose including, without limitation, for Tax withholding purposes or Company Employee Plan purposes. The Company and its Subsidiaries have no material liability by reason of an individual who performs or performed services for the Company or its Subsidiaries in any

capacity being improperly excluded from participating in a Company Employee Plan or any individual being improperly allowed to participate in such Company Employee Plan.

(h) Foreign Company Benefit Plans. With respect to each Company Employee Plan that is mandated by a government other than the United States or subject to the Laws of a jurisdiction outside of the United States (each, a "**Foreign Company Benefit Plan**"), the fair market value of the assets of each funded Foreign Company Benefit Plan, the liability of each insurer for any Foreign Company Benefit Plan funded through insurance or the book reserve established for any Foreign Company Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date of this Agreement, with respect to all current and former participants in such Foreign Company Benefit Plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Foreign Company Benefit Plan, and, to the Knowledge of the Company, no transaction contemplated by this Agreement shall cause such assets or insurance obligations to be less than such benefit obligations. Each Foreign Company Benefit Plan has been maintained and operated in all material respects in accordance with the applicable plan document and all applicable Laws and other requirements, and if intended to qualify for special tax treatment, satisfies all requirements for such treatment.

2.21 **Employment and Labor Matters**.

(a) Neither the Company nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, labor union contract, industrial agreement, trade union agreement, or other Contract with a labor organization (each a "**Collective Bargaining Agreement**"). To the Knowledge of the Company, there are, and for the past three (3) years have been, no (i) activities or proceedings of any labor organization to organize any Employees of the Company or any of its Subsidiaries or (ii) labor organizing activities among Employees. No Collective Bargaining Agreement is being negotiated by the Company or any of its Subsidiaries. There is, and for the past three (3) years has been, no strike, lockout, slowdown, work stoppage, or other material labor dispute pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries. With respect to the transactions contemplated by this Agreement, the Company and its Subsidiaries have satisfied all notice, consultation, consent, and bargaining obligations owed to Employees and their representatives under applicable Law or Collective Bargaining Agreement.

(b) The Company and its Subsidiaries are, and for the past three (3) years have been, in compliance in all material respects with applicable Laws with respect to labor and employment (including applicable Laws regarding wage and hour requirements, correct classification of independent contractors and of Employees as exempt and non-exempt, immigration status, discrimination in employment, Employee health and safety, rest hours, obligatory compensations, obligatory guarantees and collective bargaining). Except as would not result in material liability to the Company or any of its Subsidiaries: (i) the Company and its Subsidiaries have paid all wages, salaries, wage premiums, commissions, bonuses, fees, and other compensation which have come due and payable to their Employees and independent

contractors under applicable Law, Contract or company policy; and (ii) neither the Company nor any of its Subsidiaries is liable for any fines, taxes, interest, or other penalties for any failure to pay or delinquency in paying such compensation.

(c) In the past three (3) years, neither the Company nor any of its Subsidiaries has implemented or announced any location closing or employee layoff implicating the Worker Adjustment and Retraining Notification Act of 1988 or any similar applicable foreign, state, or local Law. The Company has made available to Parent the name, work location, and termination date of each Employee terminated by the Company or any of its Subsidiaries in the ninety (90) days immediately preceding the Closing Date.

2.22 **Insurance**. Section 2.22 of the Disclosure Schedule sets forth a list of insurance policies that cover the Company and its Subsidiaries. The list includes, for each such policy, the type of policy, form of coverage, the policy number and the name of the insurer. Except as would not be material to the Company and its Subsidiaries, taken as a whole, (a) all material insurance policies maintained by the Company and its Subsidiaries are in full force and effect and all premiums due and payable thereon have been paid, and (b) neither the Company nor any of its Subsidiaries is in breach or default of any of the material insurance policies, and neither the Company nor any of its Subsidiaries has taken any action, or failed to take any action, which, with notice or the lapse of time, would constitute such a breach or default or permit termination or modification of any of the material insurance policies. Since January 1, 2016 through the date hereof, neither the Company nor any of its Subsidiaries has received any notice of termination or cancellation or, as of the date hereof, denial of coverage with respect to any material insurance policy maintained by the Company or any of its Subsidiaries or any material claim made pursuant to any such insurance policy.

2.23 **Brokers' Fees**. Except for Deutsche Bank Securities Inc. and JPMorgan Chase & Co. (the fees and expenses of which will be Unpaid Transaction Expenses), there is no financial advisor, investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries that is entitled to any financial advisor's, investment banking, brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement.

2.24 **Customers; Vendors**. Section 2.24 of the Disclosure Schedule sets forth a complete and accurate list of (a) the Company's and its Subsidiaries top twenty (20) customers measured by aggregate billings by the Company or its Subsidiaries during the calendar year ended December 31, 2015 and the six (6) month period ended June 30, 2016 ("**Material Customers**") and (b) the twenty (20) largest vendors of the Company and its Subsidiaries measured by aggregate billings to the Company or its Subsidiaries during the calendar year ended December 31, 2015 and the six (6) month period ended June 30, 2016 ("**Material Vendors**"). None of the Material Customers or Material Vendors has canceled or terminated their respective Contracts with the Company or its Subsidiaries or delivered any written, or, to the Knowledge of the Company, oral, notice to the Company or its Subsidiaries of their intention

to terminate such Contracts or adversely modify the terms thereof in a manner material to the Company and its Subsidiaries taken as a whole.

2.25 **Related Party Transactions**. Except as set forth on Section 2.25 of the Disclosure Schedule, there are no Contracts between any of the Company or its Subsidiaries, on the one hand, and any officer or director (or, to the Knowledge of the Company, employee) of the Company or any of its Subsidiaries, any Securityholder holding 0.50% or more of the outstanding Company Capital Stock, or to the Company's Knowledge, any of its Affiliates or any member of any such Person's family, on the other hand (other than, in the case of any employee, officer or director, any employment Contract or Contract with respect to the issuance of equity in the Company, in each case, set forth elsewhere on the Company Disclosure Schedule) and no such Person owns any material asset or property used in the business of the Company and its Subsidiaries. Except as set forth on Section 2.25 of the Disclosure Schedule or travel and similar advances to employees in the ordinary course of business, neither the Company nor any of its Subsidiaries has loaned any amounts that remain outstanding to any officer, director or employee of the Company or any of its Subsidiaries, to any Securityholder or any of its Affiliates or to any member of any such Person's family, and neither the Company nor any of its Subsidiaries has borrowed funds or incurred Indebtedness from any of the foregoing.

2.26 **Environmental**. Each of the Company and its Subsidiaries is and for the past two (2) years, and to the Knowledge of the Company for the past three (3) years, has been in compliance in all material respects with all applicable Environmental Laws, including with respect to any Permits required pursuant to Environmental Laws. Neither the Company nor any of its Subsidiaries has received any written notice or report alleging any violation by the Company or any Subsidiary of any Environmental Laws, or liability of the Company or any Subsidiary under, Environmental Laws. Neither the Company nor any of its Subsidiaries (nor any of their respective predecessors) has treated, stored, disposed of, arranged for the disposal of, transported, handled, exposed any Person to, or released, or to the Knowledge of the Company, owned or operated any facility or property contaminated by, any Hazardous Substance which has given or would reasonably be expected to give rise to liability of the Company or any Subsidiary pursuant to Environmental Laws. The Company has furnished to Parent all Phase 1 and Phase 2 environmental assessments, environmental audits from the past three (3) years from the date hereof that, to the Company's Knowledge, are in its possession.

2.27 **Exclusivity of Representations**. Parent and Merger Sub acknowledge and agree, for themselves and on behalf of their Representatives and Affiliates, that, except for the representations and warranties of the Company expressly set forth in this Agreement, the Related Agreements and the certificates contemplated hereby and thereby, (a) neither the Company nor any of its Subsidiaries (or any other Person) makes, or has made, any representation or warranty, express or implied, relating to the Company, its Subsidiaries or any of their businesses or operations or otherwise in connection with this Agreement or the Transactions, (b) no Person has been authorized by the Company or any of its Subsidiaries to make any representation or warranty, express or implied, relating to the Company, its Subsidiaries or any of their businesses or operations or otherwise in connection with this Agreement or the Transactions, and if made,

such representation or warranty must not be and has not been relied upon by Parent or Merger Sub or any of their Affiliates or Representatives as having been authorized by the Company or any of its Subsidiaries (or any other Person) and (c) Parent and Merger Sub and their Representatives and Affiliates are not acting (including when entering into or consummating this Agreement or the Transactions) in reliance on any representation or warranty, express or implied, written or oral, or in reliance on any materials, statements or information provided or addressed to Parent or Merger Sub or their Representatives or Affiliates in any electronic data room hosted by or on behalf of the Company in connection with the Transactions, in any presentations by the Company's management or in any other form or setting, or in reliance on the accuracy, sufficiency or completeness of any such representation, warranty, materials, statements or information and that no Person shall have any liability with respect to any such representation, warranty, materials, statements or information or omissions therefrom. Parent and Merger Sub acknowledge and agree, for themselves and on behalf of their Representatives and Affiliates, that any estimate, projection, prediction, data, memorandum, presentation or forward looking statement (including any forward looking statement regarding revenues, costs, margins or other financial information or the acquisition or retention of employees, customers or other business partners) provided or addressed to Parent or Merger Sub or any of their Affiliates or Representatives, or any materials or information made available in the electronic data room hosted by or on behalf of the Company in connection with the Transactions or in connection with presentations or statements by the Company's management, are not and shall not be deemed to be or include representations or warranties and have not been relied upon by Parent, Merger Sub or any of their Affiliates or Representatives, except as otherwise expressly set forth in this Agreement, the Related Agreements and the certificates contemplated hereby and thereby, and Parent and its Affiliates shall have no claim against any Person with respect thereto. Notwithstanding anything to the contrary herein, nothing contained in this Agreement shall limit the recourse of any Party in the event of intentional fraud, committed with actual knowledge, with respect to representations and warranties expressly set forth in this Agreement or the certificates contemplated hereby.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub, jointly and severally, hereby represent and warrant to the Company as follows:

3.1 **Organization**. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the respective jurisdiction of its incorporation. Each of Parent and Merger Sub has the corporate power to own its properties and to carry on its business as currently being conducted. Each of Parent and Merger Sub is duly qualified or licensed to do business and in good standing as a foreign corporation (if applicable) in each jurisdiction in which it conducts business, except in those jurisdictions where the failure to be so qualified would not have, individually or in the aggregate, a Parent Material Adverse Effect. Each of Parent and Merger Sub have made available to the Company a true and correct copy of its certificate of incorporation and bylaws (collectively, the "**Parent and Merger Sub**

Charter Documents"). Each of Parent and Merger Sub is in compliance with its applicable Parent and Merger Sub Charter Documents in all material respects. Merger Sub is a direct or indirect, wholly owned Subsidiary of Parent that has been organized solely for the purpose of consummating the transactions contemplated herein and does not conduct, and has never conducted, any business or other operations.

3.2 **Authority**. Each of Parent and Merger Sub has the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder (including the consummation by such party of the Transactions, including the Financing). The execution and delivery by each of Parent and Merger Sub of this Agreement and the performance by each of Parent and Merger Sub of their respective obligations under this Agreement (including the consummation by each of Parent and Merger Sub of the Transactions, including the Financing) have been duly authorized by all necessary corporate and stockholder action on the part of Parent and Merger Sub, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize the execution or delivery by Parent or Merger Sub of this Agreement or the performance by Parent or Merger Sub of their respective obligations under this Agreement (including the consummation by Parent or Merger Sub of the Transactions, including the Financing). This Agreement has been duly executed and delivered by each of Parent and Merger Sub and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes the valid and binding obligations of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, except as such enforceability may be subject to (a) the Laws of general application relating to bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting or relating to creditors' rights generally and (b) general principles of equity.

3.3 **No Conflict**. Assuming the receipt or making of the consents, waivers, approvals, orders, authorizations, registrations, declarations and filings specified in Section 3.4 (*Governmental Consents*), the execution and delivery by each of Parent and Merger Sub of this Agreement does not, and the performance by each of Parent and Merger Sub of their respective obligations under this Agreement (including the consummation by each of Parent and Merger Sub of the Transactions, including the Financing) will not, Conflict with (a) any provision of the Parent or Merger Sub Charter Documents, (b) any Contract or Permit that is material to Parent and Merger Sub, taken as a whole, or (c) any Law or Order applicable to Parent or Merger Sub or any of their properties or assets, except in the case of clauses (b) or (c) above, for such Conflicts which would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

3.4 **Governmental Consents**. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required by or with respect to Parent or Merger Sub in connection with the execution and delivery by Parent or Merger Sub of this Agreement or the performance by Parent or Merger Sub of their respective obligations under this Agreement (including the consummation by Parent and Merger Sub of the Transactions, including the Financing), except for (a) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, (b) the applicable requirements of the HSR Act

or under any other Antitrust Laws and the expiration or termination of the applicable waiting periods thereunder, (c) the applicable FCC consents and State PUC consents and notices, (d) any filings required by applicable securities Laws, (e) any export control filings that may be required by Parent or Merger Sub needed to transfer products, software, or technology, and (f) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

3.5 **Permits**. As of the date of this Agreement, to the knowledge of Parent, Parent and Merger Sub are legally qualified to acquire and hold, directly or indirectly, all Company Permits granted by the FCC and State PUCs, assuming delivery of all notices and receipt of all approvals contemplated hereby prior to such acquisition and holding of the Company Permits.

3.6 **Actions; Orders**. As of the date of this Agreement, there is no Action by or before any Governmental Authority pending or, to the Knowledge of Parent, threatened against Parent or Merger Sub that would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Neither Parent nor any of its Subsidiaries is subject to any Order that would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

3.7 **Accuracy of Representations and Statements**. All information provided by or on behalf of Parent relating to any application before, notice to, or consent or approval from, a Governmental Authority required in connection with this Agreement was and will be accurate and complete in all material respects to the extent required by applicable Law, including, without limitation, all information relating to the financial data, ownership structure and business interests of Parent or Merger Sub.

3.8 **Brokers' Fees**. Except for Evercore, whose fees and expenses shall be borne solely by Parent, there is no financial advisor, investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of Parent or any of its Affiliates that is entitled to any financial advisor's, investment banking, brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement.

3.9 **Financing**.

(a) As of the date hereof, Parent has delivered to the Company true, correct and complete copies of (i) the executed commitment letter dated as of the date hereof (the "**Debt Commitment Letter**"; *provided*, that for purposes of this Agreement, the Debt Commitment Letter shall also include, after the date hereof, to the extent alternative financing from alternative financial institutions is obtained in accordance with this Agreement, any commitment letters executed by such alternative financial institutions in respect of such alternative financing) from [redacted] (the "**Lenders**"; *provided*, that for purposes of this Agreement, the Lenders shall also include, after the date hereof, to the extent alternative financing from alternative financial institutions is obtained in accordance with this Agreement,

any such alternative financial institution), together with the executed fee letter referenced in the Debt Commitment Letter (the "**Debt Fee Letter**") (except that the fee amounts, pricing caps, certain provisions relating to "flex" and "successful syndication" and other economic terms (none of which would adversely affect the amount or availability of the Debt Financing) set forth therein have been redacted), pursuant to which, and subject only to the terms and conditions expressly set forth therein, the Lenders have committed to lend the amounts set forth therein to Parent for the purpose of funding the transactions contemplated by this Agreement (the "**Debt Financing**"); *provided*, that for purposes of this Agreement, the Debt Financing shall also include, after the date hereof, to the extent alternative financing from alternative financial institutions is obtained in accordance with this Agreement, any such alternative financing, and (ii) the executed equity commitment letter, dated as of the date hereof (the "**Equity Commitment Letter**" and, together with the Debt Commitment Letter, the "**Commitment Letters**") from the Guarantors, pursuant to which, and subject only to the terms and conditions expressly set forth therein, the Guarantors have committed to invest the amounts set forth therein (the "**Equity Financing**" and, together with the Debt Financing, the "**Financing**"). Other than the Debt Fee Letter, there are no side letters or other agreements, contracts or arrangements (except for customary engagement letters in respect of the Debt Financing) relating to the Commitment Letters. The Equity Commitment Letter provides, and will continue to provide, that, subject to the terms and conditions of this Agreement and the Equity Commitment Letter, the Company is a third party beneficiary thereof to the extent provided therein.

(b) As of the date hereof, each of the Commitment Letters is in full force and effect and has not been withdrawn or terminated or otherwise amended, supplemented or modified in any respect. Each of the Commitment Letters, in the form so delivered, is a legal, valid and binding obligation of Parent and Merger Sub and, to the knowledge of the Parent, the other parties thereto, in each case, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity. As of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of Parent or Merger Sub under any term, or a failure of any condition, of any of the Commitment Letters or otherwise result in any portion of the Financing contemplated thereby to be unavailable. Assuming the satisfaction of the conditions set forth in Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*) and Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*) hereof and the completion of the Marketing Period, neither Parent nor Merger Sub has reason to believe that it could be unable to satisfy on a timely basis any term or condition of any of the Commitment Letters required to be satisfied by it or that any portion of the Financing contemplated thereby will be unavailable to Parent and Merger Sub at the Closing. Parent and Merger Sub have fully paid any and all commitment fees or other fees in connection with the Commitment Letters that are due and payable on or before the date of this Agreement and will fully pay at or prior to the Closing any and all commitment fees or other fees in connection with the Commitment Letters that are due and payable after the date of this Agreement and at or prior to the Closing.

(c) Assuming the satisfaction of the conditions set forth in Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*) and Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*) hereof, the completion of the Marketing Period and the funding of the Debt Financing, the aggregate proceeds from the Financing (after netting out original issue discount and similar premiums and charges provided under the Debt Commitment Letter and the Debt Fee Letter) are sufficient to fund all of the amounts required to be provided by Parent and/or Merger Sub pursuant to Section 1.2(b) (*Closing-Party Deliveries*) for the consummation of the Transactions, and are sufficient for the satisfaction of all of Parent's and Merger Sub's payment obligations under this Agreement at the Closing, including the payment of the Aggregate Closing Stockholder Proceeds and the Aggregate Closing Option Proceeds and the payment of all associated costs and expenses required by Parent and Merger Sub at the Closing (including any repayment or refinancing of Payoff Indebtedness). There are no conditions precedent or other contingencies related to the funding or investing, as applicable, of the full amount of the Financing, other than as expressly set forth in the Commitment Letters.

(d) Subject to the terms of Section 8.10 (*Remedies*), the obligations of Parent and Merger Sub under this Agreement are not contingent in any respect upon the funding of the amounts contemplated to be funded pursuant to the Commitment Letters. Subject to the terms of Section 8.10 (*Remedies*), the obligations of Parent and Merger Sub under this Agreement are not subject to any conditions regarding Parent's, Merger Sub's, their respective Affiliates', or any other Person's ability to obtain financing for the consummation of the Transactions.

(e) None of the Guarantors, Parent, Merger Sub or any of their respective Affiliates has entered into any Contract, arrangement or understanding (i) awarding any agent, broker, investment banker or financial advisor any financial advisory role on an exclusive basis in connection with the Merger; or (ii) prohibiting or seeking to prohibit any bank, investment bank or other potential provider of debt financing from providing or seeking to provide debt financing or financial advisory services to any Person in connection with a transaction relating to the Company or any of its Subsidiaries in connection with the Merger.

3.10 **Guaranty**.

(a) Concurrently with the execution of this Agreement, Parent and Merger Sub have delivered to the Company the Guaranty, pursuant to which, subject to the terms of this Agreement and the Guaranty, the Guarantors, collectively, have guaranteed (A) the full amount of the Termination Fee and (B) all liabilities and damages payable by Parent or Merger Sub pursuant to Section 4.12(a) (*Financing-Parent and Merger Sub Indemnification*) and Section 6.3 (*Termination Fee*), up to an aggregate amount equal to the Parent Liability Limitation. Each Guarantor has all requisite corporate (or similar) power and authority to enter into the Guaranty and to consummate the transactions contemplated thereby. The execution and delivery of the Guaranty and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate (or similar) action on the part of each Guarantor, and no other corporate (or similar) proceedings on the part of the Guarantors are necessary to authorize

the Guaranty or the transactions contemplated thereby. The Guaranty has been duly executed and delivered by the Guarantors and constitutes the valid and binding obligation of the Guarantors enforceable against the Guarantors in accordance with its terms.

3.11 **Solvency**. None of Parent or Merger Sub is entering into the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Parent, Merger Sub, the Company or any of their respective Subsidiaries. Assuming the Company and each of its Subsidiaries are Solvent immediately prior to the Closing and the representations and warranties of the Company contained in this Agreement, the Related Agreements and the certificates contemplated hereby and thereby are true and correct in all material respects as of Closing and subject to the satisfaction of the conditions in Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*) and Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*), each of Parent and the Surviving Corporation will, immediately after giving effect to all of the transactions contemplated by this Agreement, including the Financing and the payment of the portion of the Merger Consideration payable at Closing, the payment of all other amounts required to be paid in connection with the consummation of the transactions contemplated by this Agreement and the payment of all related fees and expenses, be Solvent at and immediately after the Effective Time. As used in this Section 3.11, the term "**Solvent**" means, with respect to a particular date, that on such date, (a) the sum of the assets, at a fair valuation, of Parent and the Surviving Corporation and its Subsidiaries (on a consolidated basis) and of each of them (on a stand-alone basis) will exceed their debts, (b) Parent and the Surviving Corporation and its Subsidiaries (on a consolidated basis) and each of them (on a stand-alone basis) has not incurred and does not intend to incur, and does not believe that it will incur, debts beyond its ability to pay such debts as such debts mature, and (c) Parent and the Surviving Corporation and its Subsidiaries (on a consolidated basis) and each them (on a stand-alone basis) has sufficient capital and liquidity with which to conduct its business. For purposes of this Section 3.11, "**debt**" means any liability on a claim, and "**claim**" means any (i) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, and (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

3.12 **Stockholder and Management Arrangements**. Except as expressly authorized by the Company, none of Parent, Merger Sub, the Guarantors, or any of their respective Affiliates, is a party to any Contract (other than the Rollover Agreements and the Securityholder Support Agreements) entered into prior to the date of this Agreement with any stockholder, director, officer or other Affiliate of the Company or any of its Subsidiaries relating to this Agreement, the Merger or any other transactions contemplated by this Agreement, or the Surviving Corporation or any of its Subsidiaries, businesses or operations (including as to continuing employment) from and after the Effective Time.

3.13 **Independent Investigation**. Parent acknowledges (for itself and on behalf of its Affiliates and the Representatives of any of the foregoing) that it has conducted and completed its own investigation, analysis and evaluation of the Company and its Subsidiaries, that it has made all such reviews and inspections of the financial condition, business, results of operations, properties, assets and prospects of the Company and its Subsidiaries as it has deemed necessary or appropriate, that it has had the opportunity to request all information it has deemed relevant to the foregoing from the Company and has received responses it deems adequate and sufficient to all such requests for information, and that in making its decision to enter into this Agreement and to consummate the Transactions it has relied solely on its own investigation, analysis and evaluation of the Company and its Subsidiaries and the representations and warranties of the Company set forth in this Agreement, the Related Agreements and the certificates contemplated hereby and thereby. Parent acknowledges (for itself and on behalf of its Affiliates and the Representatives of any of the foregoing) that, as of the date hereof, Parent and its Affiliates and Representatives (a) have received full access to (i) such books and records, facilities, equipment, contracts and other assets of the Company and its Subsidiaries that Parent and its Affiliates and the Representatives of any of the foregoing, as of the date hereof, have requested to review and (ii) the electronic data room hosted by or on behalf of the Company in connection with the Transactions, and (b) have had full opportunity to meet with the management of the Company and to discuss the business and assets of the Company and its Subsidiaries. Parent and Merger Sub acknowledge and agree, for themselves and on behalf of their Representatives and Affiliates, that, except for the representations and warranties of the Company expressly set forth in this Agreement, the Related Agreements and the certificates contemplated hereby and thereby, (a) neither the Company nor any of its Subsidiaries (or any other Person) makes, or has made, any representation or warranty, express or implied, relating to the Company, its Subsidiaries or any of their businesses or operations or otherwise in connection with this Agreement or the Transactions, (b) no Person has been authorized by the Company or any of its Subsidiaries to make any representation or warranty, express or implied, relating to the Company, its Subsidiaries or any of their businesses or operations or otherwise in connection with this Agreement or the Transactions, and if made, such representation or warranty has not been relied upon by Parent or Merger Sub or any of their Affiliates or Representatives as having been authorized by the Company or any of its Subsidiaries and (c) Parent and Merger Sub and their Representatives and Affiliates are not acting (including when entering into or consummating this Agreement or the Transactions) in reliance on any representation or warranty, express or implied, written or oral, or in reliance on any materials, statements or information provided or addressed to Parent or Merger Sub or their Representatives or Affiliates in any electronic data room hosted by or on behalf of the Company in connection with the Transactions, in any presentations by the Company's management or in any other form or setting, or in reliance on the accuracy, sufficiency or completeness of any such representation, warranty, materials, statements or information and that no Person shall have any liability with respect to any such representation, warranty, materials, statements or information or omissions therefrom. Parent and Merger Sub acknowledge and agree, for themselves and on behalf of their Representatives and Affiliates, that any estimate, projection, prediction, data, memorandum, presentation or forward looking statement (including any forward looking statement regarding revenues, costs, margins or other financial information or the acquisition or retention of employees, customers or

other business partners) provided or addressed to Parent or Merger Sub or any of their Affiliates or Representatives, or any materials or information made available in the electronic data room hosted by or on behalf of the Company in connection with the Transactions or in connection with presentations or statements by the Company's management, are not and shall not be deemed to be or include representations or warranties and have not been relied upon by Parent, Merger Sub or any of their Affiliates or Representatives, except as otherwise expressly set forth in this Agreement, the Related Agreements and the certificates contemplated hereby and thereby, and Parent and its Affiliates shall have no claim against any Person with respect thereto. Notwithstanding anything to the contrary herein, nothing contained in this Agreement shall limit the recourse of any Party in the event of intentional fraud, committed with actual knowledge, with respect to representations and warranties expressly set forth in this Agreement or the certificates contemplated hereby.

ARTICLE IV
COVENANTS AND AGREEMENTS

4.1 **Conduct of Business of the Company**.

(a) During the Pre-Closing Period, except as expressly permitted or required by this Agreement or as expressly set forth in Section 4.1 of the Disclosure Schedule or otherwise consented to by Parent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall (i) operate the business of the Company and each of its Subsidiaries in the ordinary course in all material respects, (ii) use its commercially reasonable efforts to keep available the services of the Company's and its Subsidiaries' present officers and employees (other than termination for cause) and (iii) use its commercially reasonable efforts to preserve the Company's and its Subsidiaries' business organization, properties and goodwill, including their present operations, physical facilities, insurance policies and relationships with customers, suppliers, distributors, licensors, licensees, lessors, lenders, regulators and others having such business dealings with it; *provided, however*, that no action by the Company or its Subsidiaries with respect to matters specifically addressed by any provision of Section 4.1(b) (*Specific Conducts of the Company*) shall be deemed a breach of this Section 4.1(a) unless such action would constitute a breach of such specific provision.

(b) During the Pre-Closing Period, except as expressly permitted or required by this Agreement or as expressly set forth in Section 4.1 of the Disclosure Schedule or otherwise consented to by Parent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), neither the Company nor any of its Subsidiaries shall:

(i) (A) sell, license (other than non-exclusive licenses of Technology or service related agreements in the ordinary course of business), or otherwise assign or convey ownership of any material items of Company Intellectual Property, other than in the ordinary course of business, or (B) abandon or permit to lapse any material items of Company Registered Intellectual Property or (C) enter into any Contract with respect to the development of any Technology with any other Person, other than in the ordinary course of business;

(ii) other than in the ordinary course of business, (A) enter into any Contract which would have been required to have been disclosed on Section 2.16(a) of the Disclosure Schedule had such Contract been entered into prior to the date of this Agreement, (B) materially amend any such Contract or any Company Material Contract, or (C) exercise any right of Company or its Subsidiaries to extend, renew, or terminate any such Contract or any Company Material Contract, other than any renewal or expiration which occurs automatically as provided by the terms of such Contract, in a manner materially adverse to the Company and its Subsidiaries, provided, that the Company will not take any actions contemplated by clause (B) or (C) with respect to the Contracts set forth in Section 4.1(b)(ii) of the Disclosure Schedule even in the ordinary course of business;

(iii) split, combine or reclassify any Company Capital Stock, or issue any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock;

(iv) issue, grant, deliver or sell, or purchase, redeem or otherwise acquire, any shares of capital stock of the Company or any of its Subsidiaries or any securities convertible into such shares, or subscriptions, rights, warrants or options to acquire any such shares or convertible securities, other than (A) issuances, sales or deliveries of Company Common Stock pursuant to exercises of Company Options outstanding as of the date of this Agreement and set forth on Section 2.2(b) of the Disclosure Schedule and (B) repurchases from Employees following their termination pursuant to the terms of their pre-existing agreements to purchase Company Options or Company Capital Stock;

(v) amend or otherwise modify any Organizational Documents of the Company or any of its Subsidiaries;

(vi) acquire any equity securities or all or substantially all of the assets of another Person or other business enterprise or division thereof (whether by merger, consolidation, sale of stock, sale of assets or otherwise);

(vii) sell, lease, license (other than non-exclusive licenses of Technology or service related agreements in the ordinary course of business), convey or otherwise dispose, or execute and deliver any Contract contemplating the sale, lease, license, conveyance or other disposition of, properties and assets of the Company and its Subsidiaries having an aggregate value in excess of $[redacted] other than in the ordinary course of business;

(viii) incur any Indebtedness except that the Company may incur additional Indebtedness by drawing additional funds under the Company's existing revolving loan facility with Silicon Valley Bank consistent with its terms as in effect on the date hereof; *provided, however*, that such Indebtedness will be prepayable at the Closing without penalty (other than customary LIBOR breakage costs) and to the extent outstanding will be included in the Closing Indebtedness;

(ix) grant any loans for borrowed money to others or purchase debt securities of others, other than travel and similar advances to employees in the ordinary course of business or transactions among the Company and its Subsidiaries or one or more of the Company's Subsidiaries;

(x) except (x) pursuant to the requirements under a Company Employee Plan or Contract in effect as of the date of this Agreement and, to the extent required under Section 2.20(b) (*Employee Benefit Plans and Compensation - Documents*), made available to Parent or (y) as required by applicable Law, or (z) as otherwise specifically permitted by another subsection of this Section 4.1(b), (A) adopt, terminate or materially amend any Company Employee Plan (including any underlying agreements), except (x) as required to maintain the qualified status of such Company Employee Plan, (y) as otherwise permitted by clauses (B), (C) or (D) of this subsection 4.1(b)(x), or (z) as conducted in the ordinary course of business changes to any health and welfare plans during the annual open enrollment period, (B) increase the compensation or other material benefits payable to or to become payable to any Employee or individual service provider, except in the ordinary course of business (including, for this purpose, the normal salary, annual target bonus and equity compensation review process) (x) for Employees or individual service providers with annual target cash compensation not exceeding $[redacted] or (y) for Employees or individual service providers with annual target cash compensation equal to or greater than $[redacted] in amounts of no more than 4% for any individual and solely if the Closing has not occurred by January 31, 2017, (C) enter into any employment, consulting, severance or similar Contract (except (x) for employment or consulting Contracts terminable on less than thirty (30) days' notice without severance or similar liabilities and (y) for extension of, without modification, existing employment Contracts in the ordinary course of business consistent with past practice), or (D) pay any severance or termination pay (in cash or otherwise) to any Employee in excess of six (6) months of such Employee's annual base salary, in any individual instance, and $[redacted] in the aggregate. In the event that an action under this subsection 4.1(b)(x) requires Parent's consent, Parent agrees to respond to the Company's request as soon as administratively practicable, but in no event more than three (3) Business Days following Parent's receipt of the Company's request for consent;

(xi) make, change or rescind any election in respect of Taxes, adopt or change any accounting method or other material accounting policy, in either case, in respect of Taxes (except as may be required under GAAP), enter into any closing agreement, settle any claim or assessment in respect of Taxes, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes or fail to pay any material Tax when it becomes due and payable;

(xii) sell, assign, convey or fail to maintain or renew any Company Permit;

(xiii) declare, make or pay any non-cash dividend or distributions to the equityholders of the Company or its Subsidiaries;

(xiv) enter into any material transaction with any director or officer of the Company, or any of its Subsidiaries, other than any employment or consulting Contract otherwise expressly permitted under this Section 4.1(b), outside of the ordinary course of business;

(xv) take any action or enter into any commitment with respect to or in contemplation of any liquidation, dissolution, recapitalization, reorganization or other winding up of the business or operation of the Company or its Subsidiaries;

(xvi) implement or announce any material reduction-in-force or similar broad-based employee layoffs, or location closings;

(xvii) authorize any Lien to be imposed on any of the assets, tangible or intangible, of the Company or any of its Subsidiaries, other than Permitted Liens;

(xviii) make any capital expenditure (or commitment to make any capital expenditure that may result in the obligation to make payments by the Company or its Subsidiaries after the Effective Time) that, when added to the capital expenditures made or committed during the then-current calendar month and the then-preceding five (5) calendar months, in the aggregate, exceeds the sum of (A) $[redacted] and (B) the amount by which the Company's capital expenditures made or committed during the then-preceding six (6) preceding full calendar months is less than $[redacted]

(xix) institute, compromise, settle or agree to settle any Actions (A) involving amounts in excess of $[redacted] individually or $[redacted] in the aggregate, or (B) that would impose any material non-monetary restrictions on the business of the Company or its Subsidiaries that would continue after the Effective Time; or

(xx) agree (orally or in writing) to take any of the actions described in this Section 4.1(b).

(c) From 11:59 p.m. Pacific time on the day immediately prior to the Closing Date through the Effective Time, the Company shall not, and shall cause each of its Subsidiaries not to, use or transfer any current assets of the Company or any of its Subsidiaries (other than cash, cash equivalents and marketable securities solely to the extent contemplated by Section 4.15 (*Use of Cash*) and which amounts so used will be excluded from the calculation of Closing Cash), to the extent such current assets are sold, liquidated, disposed of or otherwise used to (i) make payment in respect of or discharge any Closing Indebtedness or Unpaid Transaction Expenses, (ii) pay any dividends, distributions or other payments to or for the benefit of any Securityholders or (iii) repurchase any equity securities of the Company.

Parent acknowledges and agrees that (i) nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's or the Company's Subsidiaries' operations during the Pre-Closing Period, and (ii) during the Pre-Closing Period,

the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over it and its Subsidiaries' operations.

4.2 **No Solicitation**. During the Pre-Closing Period, neither the Company nor any of its Subsidiaries or Affiliates shall, nor shall they authorize or permit any of their respective Representatives to, directly or indirectly, (a) solicit, initiate or knowingly encourage, facilitate or assist, an Acquisition Proposal, (b) furnish to any Person (other than Parent, Merger Sub or any designees of Parent or Merger Sub) any non-public information relating to the Company or any of its Subsidiaries, or afford to any Person (other than Parent, Merger Sub or any of their Representatives) access to the business, properties, assets, books, records or other non-public information, or to any personnel, of the Company or any of its Subsidiaries, in any such case with the intent to induce the making, submission or announcement of, or the intent to encourage, facilitate or assist, an Acquisition Proposal or any inquiries that would reasonably be expected to lead to an Acquisition Proposal, (c) participate or engage in discussions or negotiations with any Person with respect to an Acquisition Proposal or otherwise relating to an Acquisition Proposal, (d) enter into any Contract relating to an Acquisition Proposal or (e) agree to do any of the foregoing. The Company shall promptly notify Parent of any receipt by the Company of any Acquisition Proposal or any inquiry with respect to, or which would reasonably be expected to lead to, any Acquisition Proposal.

4.3 **Stockholder Vote**.

(a) Immediately following the execution and delivery of this Agreement, the Company shall prepare and distribute to holders of Company Capital Stock a written consent of holders of Company Capital Stock adopting this Agreement in accordance with the DGCL and the Company Charter Documents and waiving any appraisal rights under Section 262 of the DGCL, with respect thereto, and approving the appointment of Oak Hill Capital Partners III, LP as the Seller Representative, in substantially the form attached hereto as Annex G (the "**Stockholder Written Consent**"). The Company shall use its reasonable best efforts to cause such holders of Company Capital Stock to execute the Stockholder Written Consent and, in any event, shall deliver such Stockholder Written Consent executed by holders of Company Capital Stock representing at least ninety-five percent (95%) of the outstanding Company Capital Stock to Parent within twenty-four (24) hours following the execution and delivery of this Agreement.

(b) As promptly as practicable following the receipt by the Company of Stockholder Written Consents executed by holders of Company Capital Stock sufficient to obtain the Requisite Stockholder Approval, the Company shall, in accordance with applicable Law, including Sections 228 and 262 of the DGCL, and the Company Charter Documents, promptly send an information statement (the "**Information Statement**") to each holder of Company Capital Stock that has not theretofore executed the Stockholder Written Consent (i) notifying him, her or it that (1) action has been taken by less than unanimous written consent of the holders of Company Capital Stock, (2) this Agreement was duly adopted and (3) appraisal rights are available pursuant to Section 262 of the DGCL, (ii) seeking a waiver of such appraisal rights from such holder of Company Capital Stock and (iii) seeking ratification of the appointment of

Oak Hill Capital Partners III, LP as the Seller Representative. The Company shall use reasonable best efforts to obtain such Stockholder Written Consents and waivers from each holder of Company Capital Stock who has not theretofore executed a Stockholder Written Consent. The Information Statement shall be in a form reasonably acceptable to Parent and shall at all relevant times be in compliance with Section 262 of the DGCL and other applicable Laws. No later than ten (10) Business Days after the date of this Agreement, the Company shall (if applicable) deliver to Parent, for review and comment, the Information Statement and other information to be delivered to the holders of Company Capital Stock that have not theretofore executed the Stockholder Written Consent, and shall incorporate therein any reasonable comments of Parent and its Representatives delivered to the Company within two (2) Business Days after receiving such Information Statement and other information. Such Information Statement or other information shall be mailed (if applicable) by the Company to the holders of Company Capital Stock not later than fifteen (15) Business Days after the date of this Agreement.

(c) Following the date of this Agreement, the Company shall use reasonable best efforts to submit to its stockholders, for approval (in a manner and with disclosure, waiver and consent documents provided to Parent at least five (5) Business Days prior to the Closing Date and reasonably satisfactory to Parent) by a vote of such stockholders as is required pursuant to Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder (the "**280G Stockholder Vote**"), any such payments or other benefits that may, separately or in the aggregate, constitute "excess parachute payments" (within the meaning of Section 280G of the Code and the Treasury Regulations thereunder), such that, if the 280G Stockholder Vote is received approving such payments and benefits, such payments and benefits shall not be deemed to be "excess parachute payments" under Section 280G of the Code and the Treasury Regulations thereunder. Prior to such 280G Stockholder Vote, the Company shall obtain, from each person whom the Company reasonably believes to be with respect to the Company a disqualified individual and who might otherwise have, receive or have the right or entitlement to receive a parachute payment under Section 280G of the Code, a written waiver (provided to Parent prior to the solicitation of the 280G Stockholder Vote) pursuant to which such person agrees to waive any and all right or entitlement to such parachute payment, to the extent such payment would not be deductible pursuant to Section 280G of the Code. Such waivers shall cease to have any force or effect with respect to any item covered thereby to the extent the 280G Stockholder Vote for such item is obtained.

4.4 **Payment Spreadsheet**.

(a) No later than one (1) Business Day prior to the Closing Date, the Company shall deliver to Parent and the Paying Agent a final payment spreadsheet (the "**Payment Spreadsheet**") setting forth the Company's good faith calculations of the following (in each case, based on the calculation of the Estimated Merger Consideration set forth in the Pre-Closing Statement and the draft Payment Spreadsheet as modified pursuant to Section 4.4(b) below):

(i) the calculation of the Estimated Merger Consideration, including each component thereof;

(ii) the calculation of the Per Share Common Closing Merger Consideration;

(iii) the calculation of the Aggregate Closing Stockholder Proceeds;

(iv) the calculations of the Aggregate Closing Option Proceeds, the Estimated Tax Refund Amount, and the Closing Tax Refund Payments;

(v) the number of Fully Diluted Shares as of the Effective Time based on the Initial Consideration;

(vi) with respect to each Stockholder (A) the name and, if available, address of such Stockholder, (B) the number of shares of Company Capital Stock held by such Stockholder and the certificate numbers in respect thereof, (C) the consideration that such Stockholder is entitled to receive pursuant to Section 1.6(b) (*Effect of Merger on Company Capital Stock*), (D) the aggregate amount to be delivered at Closing to such Stockholder, (E) the percentage of any Positive Adjustment and any amounts to be disbursed to Securityholders out of the Adjustment Escrow Fund and/or the Seller Representative Fund (in each case, as applicable) to which each such Stockholder is entitled, (F) the percentage of any Per Share Tax Refund Amount to which each such Stockholder would be entitled under Section 4.13(j) (*Transaction Tax Deductions*), assuming the Pro Rata Portion as of the Effective Time, and (G) such Stockholder's Pro Rata Portion as of the Effective Time; and

(vii) with respect to each Optionholder (A) the name and, if available, address of such holder, (B) the exercise price per share and the number of shares of Company Capital Stock underlying such Company Option immediately prior to the Effective Time, (C) the Option Closing Consideration that such Optionholder is entitled to receive pursuant to Section 1.6(c) (*Effect of Merger on Company Options*) (subject to Section 1.6(d) (*Withholding Taxes*)), and, if applicable, the Closing Tax Refund Payments that such Optionholder is entitled to receive pursuant to Section 4.13(j) (*Transaction Tax Deductions*), (D) the aggregate amount to be delivered by the Surviving Corporation following the Closing to such Optionholder, (E) the percentage of any Positive Adjustment and any amounts to be disbursed to Securityholders out of the Adjustment Escrow Fund and/or the Seller Representative Fund (in each case, as applicable) to which each such Optionholder is entitled, (F) the percentage of any Per Share Tax Refund Amount to which each such Optionholder would be entitled under Section 4.13(j) (*Transaction Tax Deductions*), assuming the Pro Rata Portion as of the Effective Time, and (G) such Optionholder's Pro Rata Portion as of the Effective Time.

(b) No later than three (3) Business Days prior to the Closing Date, the Company shall prepare and deliver, or cause to be prepared and delivered, to Parent, a draft of the Payment Spreadsheet (based on the calculation of the Estimated Merger Consideration set forth in the Pre-Closing Statement). Parent shall be entitled to review, and the Company shall

consider in good faith, and update with respect to, the reasonable comments of Parent on, the draft Payment Spreadsheet. The Payment Spreadsheet delivered pursuant to Section 4.4(a) (*Contents of Payment Spreadsheet*) shall be based upon the draft Payment Spreadsheet delivered pursuant to this Section 4.4(b) after the Company's good faith consideration of, and updates with respect to, the reasonable comments of Parent thereon. Parent, the Surviving Corporation and the Paying Agent and their respective Affiliates shall have no liability to any current, former or alleged Securityholder for relying on or paying the Merger Consideration in accordance with the Payment Spreadsheet.

4.5 **Access to Information**. During the Pre-Closing Period, the Company shall afford Parent, the Debt Financing Sources that have executed a confidentiality or non-disclosure agreement and/or acknowledgment with the Company or that are otherwise subject to the restrictions in the Confidentiality Agreement as a representative of Parent, and their respective Representatives reasonable access during normal business hours, upon reasonable advance notice, to the information, Contracts, properties, books and records and senior management and other Representatives of the Company and its Subsidiaries and the Company shall cause its and its Subsidiaries' senior management and other Representatives to cooperate with Parent, the Lenders and their respective Representatives in connection with such access and examination; *provided, however*, that the Company may restrict or otherwise prohibit access to any documents or information to the extent that (a) any applicable Law requires the Company to restrict or otherwise prohibit access to such documents or information, (b) access to such documents or information would, based upon advice of counsel, give rise to a material risk of waiving any attorney-client privilege, work product doctrine or other applicable privilege applicable to such documents or information, or (c) access to a Contract to which the Company or any of its Subsidiaries is a party or otherwise bound would violate or cause a default under, or give a third party the right to terminate or accelerate the rights under, such Contract; *provided further, however*, that in the case of each of clauses (a) through (c) above, the Company and its Subsidiaries shall cooperate with Parent, the Lenders and their respective Representatives to enter into appropriate confidentiality, joint defense or similar arrangements so that Parent, the Lenders and their respective Representatives may have reasonable access to such information. Without limiting the generality of the foregoing, during the Pre-Closing Period, the Company shall furnish to Parent, as soon as reasonably practicable after the end of each monthly accounting period, copies of the unaudited consolidated balance sheet of the Company and its Subsidiaries and the related unaudited consolidated statements of operations, comprehensive income (loss), and cash flows for such monthly accounting period, in each case to the extent prepared by the Company in its ordinary course of business. Any investigation conducted pursuant to the access contemplated by this Section 4.5 shall be conducted in a manner that does not unreasonably interfere with the conduct of the business of the Company and its Subsidiaries or create an unreasonable risk of damage or destruction to any property or assets of the Company or any of its Subsidiaries. Any access to the properties of the Company or any of its Subsidiaries shall be subject to the Company's reasonable security measures and insurance requirements and shall not include the right to perform invasive testing. The terms and conditions of the Confidentiality Agreement shall apply to any information obtained by Parent or any of its Representatives in connection with any investigation conducted pursuant to the access

contemplated by this Section 4.5. Nothing in this Section 4.5 or elsewhere in this Agreement shall be construed to require the Company, any of its Subsidiaries or any Representatives of any of the foregoing to prepare any reports, analyses, appraisals, opinions or other information, other than to the extent otherwise prepared in the ordinary course of business.

4.6 **Public Disclosure**. The parties agree that no press release or public announcement regarding the subject matter of this Agreement or the Transactions shall be made without advance written approval thereof by the Company and Parent, except as may be required by applicable Law. If any such press release or public announcement is required by applicable Law to be made by any party hereto, prior to making such announcement, such party will deliver a draft of such announcement to the other party and shall give such other party a reasonable opportunity to comment thereon. Notwithstanding the foregoing, the Company and Parent acknowledge and agree that Parent and the Seller Representative may disclose the terms and existence of this Agreement and the Transactions to their respective Affiliates in order that such Persons may provide information about the subject matter of this Agreement and the Transactions to their respective limited partners and prospective limited partners in connection with their fundraising and reporting activities in the ordinary course of business, subject to customary confidentiality obligations with respect thereto.

4.7 **Reasonable Best Efforts**. Upon the terms and subject to the conditions set forth in this Agreement (including Sections 4.8 (*Regulatory Filings*) and 4.12 (*Financing*)), each of Parent, Merger Sub and the Company shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with such other parties in doing, all things reasonably necessary, proper or advisable under applicable Law to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including using reasonable best efforts to: (a) cause the conditions to the Merger set forth in ARTICLE V (*Conditions to the Merger*) to be satisfied (but not waived) and (b) obtain all necessary actions or non-actions, waivers, consents, approvals, orders and authorizations from Governmental Authorities and make all necessary registrations, declarations and filings with Governmental Authorities, that are necessary to consummate the transactions contemplated by this Agreement. The Company shall use its reasonable best efforts to obtain such consents of third Persons and estoppel certificates as Parent may reasonably require in connection with the Transactions (including Stockholder Written Consents from each of the Stockholders and Securityholder Support Agreements from each of the Securityholders). In addition to the foregoing, neither Parent or Merger Sub, on the one hand, nor the Company or Seller Representative, on the other hand, shall take any action that is intended to have the effect of preventing, impairing, delaying or otherwise adversely affecting the consummation of the Merger or the ability of such party to fully perform its obligations under this Agreement. Notwithstanding anything to the contrary herein, neither Parent, Merger Sub nor the Company shall be required prior to the Effective Time to pay any consent or other similar fee, "profit sharing" or other similar payment or other consideration (including increased rent or other similar payments or any amendments, supplements or other modifications to (or waivers of) the existing terms of any Contract), or the provision of additional security (including a guaranty) to obtain the consent, waiver or approval of any Person under any Contract.

4.8 **Regulatory Filings**.

(a) Each of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and the Company (and its respective Affiliates, if applicable), on the other hand, shall (x) file with the FTC and the Antitrust Division of the DOJ a Notification and Report Form relating to this Agreement and the Transactions as required by the HSR Act as soon as practicable after the date of this Agreement but in no event later than ten (10) Business Days following the execution and delivery of this Agreement, and (y) (i) file comparable pre-merger notification filings, forms and submissions with any foreign Governmental Authority that are required by any other Antitrust Laws as soon as practicable after the date of this Agreement but in no event later than thirty (30) days following the execution and delivery of this Agreement and (ii) file post-merger notification filings, forms and submissions with any foreign Governmental Authority that are required by any other Antitrust Laws as soon as practicable after the Closing Date. Each of Parent and the Company shall (i) cooperate and coordinate with the other in the making of such filings, (ii) subject to customary confidentiality arrangements as between the parties hereto, supply the other with any information that reasonably may be required in order to make such filings, (iii) supply any additional information that may be required or requested by the FTC, the DOJ or the Governmental Authorities of any other applicable jurisdiction in which any such filing is made under any other Antitrust Laws, and (iv) use reasonable best efforts to cause the expiration or termination of the applicable waiting periods under the HSR Act or other Antitrust Laws as soon as practicable, and to obtain any required consents under any other Antitrust Laws applicable to the Merger as soon as practicable, and to avoid any impediment to the consummation of the Merger under any Antitrust Laws, including taking such action as reasonably may be necessary to resolve such objections, if any, as the FTC, the DOJ, or any other Governmental Authority or Person may assert under any applicable Antitrust Laws with respect to the Merger, *provided* that notwithstanding the foregoing, no party hereto shall be required to litigate with a Governmental Authority or effect or commit to, by consent decree, hold separate orders, or otherwise, (i) the sale, divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Parent, Merger Sub, the Guarantors, the Company or their respective Subsidiaries or Affiliates, or (ii) the imposition of any limitation or regulation on the ability of Parent, Merger Sub, the Guarantors, the Company or their respective Subsidiaries or Affiliates to freely conduct their business or own such assets (an "**Antitrust Required Action**").

(b) Promptly following execution of this Agreement, Parent and Company shall each file or cause to be filed all applications and notices with the FCC and the applicable State PUCs of any Governmental Authority that are necessary or appropriate for approval of the transfer of control or the assignment of the Permits or the Financing relating to the respective businesses of the Company and each of its Subsidiaries as currently conducted or the obtaining of new Permits necessary to operate the respective businesses of the Company and each of its Subsidiaries as currently conducted, including after giving effect to the Transactions and the Financing (the "**Required Approvals**"). The Required Approvals shall include all of the consents and approvals set forth on Section 2.6(c) of the Disclosure Schedule. As soon as practicable after the date of this Agreement but in no event later than ten (10) Business Days

following the execution and delivery of this Agreement, Parent shall file or cause to be filed with the FCC and the applicable State PUCs the appropriate filings related to the Required Approvals. The Company shall promptly use reasonable best efforts to furnish information to Parent and assist Parent as it may reasonably request in connection with the preparation of the filings with respect to the Required Approvals. The Company and Parent agree that they will consult and cooperate with each other with respect to the obtaining of all Required Approvals as well as all other Consents of the FCC and all applicable State PUCs, necessary to consummate the transactions. Each of the Company, Parent and Merger Sub shall cooperate with the other party and use reasonable best efforts to prosecute or cause to be prosecuted all such applications to a favorable conclusion, and shall work with the other party to file or cause to be filed all Required Approvals as well as all other required notices of consummation with the FCC and the applicable State PUCs. No party shall take or cause to be taken any Action before the FCC or any State PUC which is intended to delay Action on such applications or consummation of the Transactions.

(c) Each of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and the Company (and its respective Affiliates, if applicable), on the other hand, shall promptly inform the other of any communication from any Governmental Authority regarding any of the transactions contemplated by this Agreement in connection with any filings or investigations with, by or before any Governmental Authority relating to this Agreement or the Transactions, including any proceedings initiated by a private party. If Parent or Merger Sub (or any of their respective Affiliates, if applicable), on the one hand, or the Company (or any of its respective Affiliates, if applicable), on the other hand, shall receive a request for additional information or documentary material from any Governmental Authority with respect to the transactions contemplated by this Agreement pursuant to the HSR Act or any other Antitrust Laws or any Laws and regulations related to FCC and State PUCs compliance with respect to which any such filings have been made, then such party shall make, or cause to be made, as soon as reasonably practicable and after consultation with such other party, an appropriate response in compliance with such request. In connection with and without limiting the foregoing, to the extent reasonably practicable and unless prohibited by applicable Law or by the applicable Governmental Authority, each of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and the Company (and its respective Affiliates, if applicable), on the other hand, shall (i) give each other reasonable advance notice of all meetings with any Governmental Authority relating to the Transactions (including the Merger), (ii) give each other an opportunity to participate in each of such meetings, (iii) keep such other party reasonably apprised with respect to any oral communications with any Governmental Authority regarding the Transactions (including the Merger), (iv) reasonably cooperate in the filing of any analyses, presentations, memoranda, briefs, arguments, opinions or other written communications explaining or defending the Transactions (including the Merger), articulating any regulatory or competitive argument and/or responding to requests or objections made by any Governmental Authority, (v) subject to customary confidentiality arrangements, provide each other with a reasonable advance opportunity to review and comment upon, and consider in good faith the views of the other with respect to, all written communications (including any analyses, presentations, memoranda, briefs, arguments and opinions) with a Governmental Authority

regarding the Transactions (including the Merger), (vi) subject to customary confidentiality arrangements, provide each other (or counsel of each party, as appropriate) with copies of all written communications to or from any Governmental Authority relating to the Transactions (including the Merger), and (vii) reasonably cooperate and provide each other with a reasonable opportunity to participate in, and consider in good faith the views of the other with respect to, all material deliberations with respect to all efforts, if any, to satisfy the conditions set forth in paragraphs (a), (b), (c), (e) and (f) of Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*). Any such disclosures, rights to participate or provisions of information by one party to the other may be made on a counsel-only basis to the extent required under applicable Law or as appropriate to protect confidential business information.

(d) Each of Parent, Merger Sub and the Company shall reasonably cooperate with one another in good faith to (i) promptly determine whether any filings not expressly contemplated by this Section 4.8 are required to be or should be made, and whether any other consents, approvals, permits or authorizations not expressly contemplated by this Section 4.8 are required to be or should be obtained, from any Governmental Authority under any other applicable Law in connection with the Transactions, and (ii) promptly make any filings, furnish information required in connection therewith and seek to obtain timely any such consents, permits, authorizations, approvals or waivers that the parties determine are required to be or should be made or obtained in connection with the Transactions.

(e) Subject to Section 4.8(a) (*Antitrust Filings*), Section 4.8(b) (*Required Approvals*) and Section 4.8(c) (*Regulatory Filings-Notice*), each of Parent and the Company will, upon reasonable request, furnish to the other all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Information Statement or any other statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any Governmental Authority in connection with the Transactions.

4.9 **Notification of Certain Matters**.

(a) During the Pre-Closing Period, the Company shall give prompt written notice to Parent and Merger Sub upon becoming aware that any representation or warranty made by it in this Agreement has become untrue or inaccurate, or of any failure of the Company to perform or comply with or satisfy any covenant or agreement to be performed or complied with by it under this Agreement, in any such case if and only to the extent that such untruth or inaccuracy, or such failure, would cause any of the conditions to the Merger set forth in Section 5.2(a) (*Additional Conditions to the Obligations of Parent and Merger Sub-Representations and Warranties*) or Section 5.2(b) (*Additional Conditions to the Obligations of Parent and Merger Sub-Covenants*) to not be satisfied at such time. No such notice, modification or updates shall be taken into account in determining whether the conditions set forth in Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*) are satisfied or in connection with the indemnification obligations set forth in ARTICLE VII (*Survival; Specific Indemnities; Waiver*).

(b) During the Pre-Closing Period, Parent shall give prompt written notice to the Company upon becoming aware that any representation or warranty made by Parent or Merger Sub in this Agreement has become untrue or inaccurate, or of any failure of Parent or Merger Sub to perform or comply with any covenant or agreement to be performed or complied with by it under this Agreement, in any such case if and only to the extent that such untruth or inaccuracy, or such failure, would cause any of the conditions to the Merger set forth in Section 5.3(a) (*Additional Conditions to the Obligations of the Company-Representation and Warranties*) or Section 5.3(b) (*Additional Conditions to the Obligations of the Company-Covenants*) to not be satisfied at such time. The terms and conditions of the Confidentiality Agreement shall apply to any information obtained by the Company pursuant to this Section 4.9(b). No such notice, modification or updates shall be taken into account in determining whether the conditions set forth in Section 5.3 (*Additional Conditions to the Obligations of the Company*) are satisfied or in connection with the indemnification obligations set forth in ARTICLE VII (*Survival; Specific Indemnities; Waiver*).

4.10 **Post-Closing Employee Matters**.

(a) As of the Effective Time and for 12 months thereafter (or, if earlier, the date of termination of employment of the relevant Continuing Employee), Parent shall, or shall cause the Surviving Corporation or its Subsidiaries to, provide each employee of the Surviving Corporation and its Subsidiaries who will be employed by Parent or one of its Subsidiaries immediately after the Effective Time (collectively, the "**Continuing Employees**" and each, a "**Continuing Employee**") with employee benefits (other than any defined benefit plan benefits, retiree health or welfare benefits, long-term incentive plans, nonqualified deferred compensation, or equity based incentive compensation or plans) that are substantially comparable to the benefits provided to such Continuing Employee as of immediately prior to the Effective Time under the Company Employee Plans (subject to adjustments to account for historical and future cost increases to the Company for the provision of such benefits). As of the Effective Time and for 12 months thereafter (or, if earlier, the date of termination of employment of the relevant Continuing Employee), Parent shall, or shall cause the Surviving Corporation or its Subsidiaries to, compensate each Continuing Employee with a base salary or wage rate and annual cash target bonus opportunity on terms no less favorable to the base salary or wage rate and annual cash target bonus opportunity, respectively, provided to such Continuing Employee immediately prior to the Effective Time, it being understood that Parent shall be allowed to modify any annual cash bonus plan to reflect any changes to the Company and its Subsidiaries that result from the contemplated Transaction to the extent that such changes are not adverse to any of the Continuing Employees relative to the terms that existed prior to the Closing.

(b) For purposes of determining eligibility to participate and vesting and, solely with respect to vacation and paid time-off, entitlement to benefits, where length of service is relevant under any employee benefit plan of Parent, the Surviving Corporation or their Subsidiaries generally applicable to employees of Parent, the Surviving Corporation, or their Subsidiaries, as applicable that is made available to the Continuing Employees and in which such Continuing Employees did not participate prior to the Effective Time (a "**Parent Plan**") and to

the extent permitted by applicable Law, Parent shall provide, or cause to be provided, that the Continuing Employees shall receive service credit under each such Parent Plan (other than a defined benefit plan or equity-based plan) for their period of service with the Company and its Subsidiaries and their respective predecessors (if any) prior to the Closing, to the same extent such service was credited under a comparable Company Employee Plan; *provided, however*, that such service need not be credited to the extent that it would result in duplication of coverage or benefits. Parent shall use commercially reasonable efforts to waive, or cause to be waived, all limitations as to preexisting conditions exclusions and waiting periods with respect to participation and coverage requirements applicable to the Continuing Employees under any Parent Plan providing medical, dental and vision benefits in which such employees may be eligible to participate after the Closing Date, other than limitations or waiting periods that would apply if such Continuing Employee had been employed by Parent and its Subsidiaries for the period of the Continuing Employee's employment with the Company. Parent shall also use commercially reasonable efforts to provide, or cause to be provided, to Continuing Employees and their eligible dependents with credit for any co-payments and deductibles paid under Company's medical, dental and vision plans for the year in which the Closing occurs under any Parent Plan providing for medical, dental and vision benefits for the purposes of satisfying any applicable co-payments and deductibles in the year in which the Closing occurs.

(c) Prior to making any written or oral communications to the Employees in advance of the Closing Date pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, the Company shall provide the Parent with a copy of the intended communication, the Parent shall have a reasonable period of time to review and comment on the communication, and the Company and Parent shall cooperate in providing any such mutually agreeable communication.

(d) [redacted]

(e) The provisions contained in this Section 4.10 are included for the sole benefit of the respective parties to this Agreement and shall not create any right or remedy (including any third-party beneficiary right) in any other Person, and shall not create any right in any Person to employment or continued employment or term or condition of employment, or preclude the ability of Parent, and, following the Closing, the Surviving Corporation or any of its Subsidiaries, to terminate the employment of any employee at any time and for any or no reason. Nothing in this Section 4.10 shall be deemed to require Parent, the Surviving Corporation, or any of its Subsidiaries to (i) establish, amend, terminate, continue or modify any Company Employee

Plan or Parent Plan or any other benefit or compensation plan, program, policy, practice, contract, agreement, or arrangement, (ii) permit any Person to participate in any particular Company Employee Plan or Parent Plan, (iii) alter or limit the ability of Parent, the Surviving Corporation, or any of its Subsidiaries after the consummation of the transactions contemplated by this Agreement to amend, modify, or terminate any Company Employee Plan or Parent Plan or other benefit or compensation plan, program, policy, practice, contract, agreement or arrangement thereof after the Effective Time, or (iv) be treated as an amendment to or establishment of any benefit or compensation plan, program, policy, practice, contract, agreement or arrangement.

4.11 **Directors' and Officers' Indemnification**.

(a) During the period commencing at the Effective Time and ending on the sixth anniversary of the Effective Time, the Surviving Corporation and its Subsidiaries shall (and Parent shall cause the Surviving Corporation and its Subsidiaries to) cause the certificates of incorporation and bylaws (and other similar Organizational Documents) of the Surviving Corporation and its Subsidiaries to contain provisions with respect to indemnification, exculpation and the advancement of expenses with respect to directors and officers that are at least as favorable as the indemnification, exculpation and advancement of expenses provisions with respect to directors and officers contained in the certificates of incorporation and bylaws (or other similar Organizational Documents) of the Company and its Subsidiaries as of the date hereof, and during such six-year period, such provisions shall not be repealed, amended or otherwise modified in any manner adverse to such directors and officers except as required by applicable Law.

(b) Prior to or at the Effective Time, the Company shall purchase (with fifty percent (50%) of the cost of such D&O Tail Policy to be included in Unpaid Transaction Expenses and the remaining fifty percent (50%) to be borne by Parent) a six-year "tail" prepaid policy on the Company's current directors' and officers' liability insurance (the "**D&O Tail Policy**"); *provided, however*, that in satisfying its obligations under this Section 4.11(b), the Company shall not be obligated to pay premiums in excess of three hundred percent (300%) of the amount paid by the Company for coverage for its last full fiscal year (such three hundred percent (300%) amount, the "**Maximum Annual Premium**"); *provided* that, if the premiums of such insurance coverage exceed such amount, the Company shall be obligated to obtain a policy with the greatest coverage available for a cost not exceeding the Maximum Annual Premium. The Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) use reasonable best efforts to maintain such D&O Tail Policy in full force and effect for the duration of the six-year period following the Effective Time and continue to honor its obligations thereunder for so long as such D&O Tail Policy shall be maintained in full force and effect.

(c) If Parent or the Surviving Corporation or any of its successors or assigns shall (i) consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfer all or substantially all of its properties and assets to any Person, then, and in each such case, the Surviving

Corporation shall exercise reasonable best efforts to provide that proper provisions shall be made so that the successors and assigns of the Surviving Corporation shall assume all of the obligations of Parent and the Surviving Corporation set forth in this Section 4.11.

(d) The obligations set forth in this Section 4.11 shall not be terminated, amended or otherwise modified in any manner that adversely affects any of the current or former directors or officers of the Company or any of its Subsidiaries or any person who becomes a director or officer of the Company or any of its Subsidiaries prior to the Effective Time (the "**D&O Indemnitees**") (or any other person who is a beneficiary under the D&O Tail Policy referred to in Section 4.11(b) (*Directors' and Officers' Insurance*) (and their heirs and representatives)) without the prior written consent of such affected D&O Indemnitee or other person who is a beneficiary under the D&O Tail Policy referred to in Section 4.11(b) (*Directors' and Officers' Insurance*) (and their heirs and representatives). Each of the D&O Indemnitees or other persons who are beneficiaries under the D&O Tail Policy referred to in Section 4.11(b) (*Directors' and Officers' Insurance*) (and their heirs and representatives) are intended to be third party beneficiaries of this Section 4.11, with full rights of enforcement as if a party thereto. The rights of the D&O Indemnitees (and other persons who are beneficiaries under the D&O Tail Policy referred to in Section 4.11(b) (*Directors' and Officers' Insurance*) (and their heirs and representatives)) under this Section 4.11 shall be in addition to, and not in substitution for, any other rights that such persons may have under the certificates of incorporation, bylaws or other equivalent Organizational Documents, any and all indemnification agreements (in effect on the date of this Agreement and made available to Parent) of or entered into by the Company or any of its Subsidiaries, or applicable Law (whether at law or in equity).

(e) Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or any of its Subsidiaries for any of their respective directors, officers or other Employees, it being understood and agreed that the indemnification provided for in this Section 4.11 is not prior to or in substitution for any such claims under such policies.

4.12 **Financing**.

(a) Parent and Merger Sub acknowledge and agree that the Company and its Affiliates and its and their respective Representatives (other than the Surviving Corporation and its Subsidiaries following the Closing) shall not have any responsibility for, or incur any liability to any Person under, any financing that Parent and Merger Sub may raise in connection with the transactions contemplated by this Agreement or any cooperation provided pursuant to this Section 4.12 and that Parent and Merger Sub shall, on a joint and several basis, indemnify and hold harmless the Company and its Affiliates and its and their respective Representatives from and against, and compensate and reimburse the Company and its Affiliates and its and their respective Representatives for, any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with the Financing and any information utilized in connection therewith, except in each case to the extent such losses, damages, claims, costs or

expenses result from the fraud, gross negligence, bad faith or willful misconduct of, or the material inaccuracy of any material information provided (or omission of any information to be provided) by, the Company and its Affiliates and their respective directors, officers, employees and representatives.

(b) Each of Parent and Merger Sub shall use reasonable best efforts to obtain the proceeds of the Financing as promptly as reasonably practicable (taking into account the anticipated timing of the Marketing Period) on the terms and conditions described in the Commitment Letters, including by: (i) maintaining in effect the Commitment Letters and the Debt Fee Letter (subject to Parent's right to replace, restate, supplement, modify, assign, substitute or amend the Debt Commitment Letter in accordance herewith), (ii) entering into definitive agreements with respect thereto on the terms and conditions contained in the Commitment Letters, which agreements shall be in effect at the Closing and (iii) satisfying, or causing their Representatives to satisfy, on a timely basis all conditions applicable to Parent, Merger Sub or their respective Representatives in such definitive agreements that are within Parent or Merger Sub's control.

(c) Parent and Merger Sub shall not agree to, or permit, any amendments or modifications to, or any waivers under, the Commitment Letters without the prior written consent of the Company, to the extent that such amendment, modification or waiver would impose new or additional conditions, otherwise expand the then existing conditions precedent to funding of the Financing at the Closing, or otherwise take any action which would be reasonably likely to (i) prevent or materially delay or impair the ability of Parent to consummate the Merger and the other transactions contemplated by this Agreement or (ii) adversely impact the ability of Parent or Merger Sub to enforce its rights against the other parties to the Commitment Letters. Parent shall not release or consent to the termination of the obligations of the Lenders under the Debt Commitment Letter, except that Parent may amend, supplement or modify the Debt Commitment Letter to add lenders, lead arrangers, bookrunners, syndication agents, or similar entities (or titles with respect to such entities) (it being understood that the aggregate commitments of the lenders party to the Debt Commitment Letter prior to such amendment, supplement or modification may only be reduced in the amount of such additional party's commitments), *provided* that such assignments or replacements would not prevent or materially delay or impair the ability of Parent to consummate the Merger or the other transactions contemplated by this Agreement.

(d) In the event that any portion of the Financing becomes unavailable in the manner or from the sources contemplated in the Commitment Letters (other than as a result of the Company's breach of any material provision of this Agreement, or failure to satisfy the conditions set forth in Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*) and Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*)), (i) Parent shall promptly so notify the Company and (ii) Parent and Merger Sub shall use reasonable best efforts to obtain, and negotiate and enter into definitive agreements with respect to, alternative financing in an amount, when combined with Parent's other available sources of funds, sufficient to consummate the transactions contemplated by this Agreement, as promptly as

reasonably practicable following the occurrence of such event (and in any event no later than the Closing Date); *provided* that Parent shall not be required to arrange or obtain any alternative financing having terms and conditions (including "market flex" provisions) materially less favorable, taken as a whole, to Parent than those contained in the Debt Commitment Letter and the Debt Fee Letter on the date hereof or having terms and conditions which would have any of the effects specified in Section 4.12(c) (*Financing - Amendments, Modifications, and Waivers*). The definitive agreements entered into pursuant to Section 4.12(b) (*Obligations of Parent and Merger Sub*), or the first sentence of this Section 4.12(d), are referred to in this Agreement, collectively, as the "**Financing Agreements**."

(e) Each of Parent and Merger Sub acknowledges and agrees that neither the obtaining of the Financing or any alternative financing, nor the completion of any issuance of securities contemplated by the Financing or any alternative financing, is a condition to the Closing, and reaffirms its obligation to consummate the transactions contemplated by this Agreement irrespective and independently of the availability of the Financing or any alternative financing, or the completion of any such issuance, subject only to the applicable conditions set forth in Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*) and Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*).

(f) Parent shall promptly (and in no event within less than one (1) Business Day) upon written request by the Company (i) furnish the Company complete, correct and executed copies of the Financing Agreements and any amendment, modification or replacement of any Commitment Letters or Financing Agreements promptly upon their execution, (ii) give the Company prompt written notice of any breach or threatened breach (in writing) by any party of any of the Commitment Letters or the Financing Agreements of which Parent or Merger Sub becomes aware or any termination or threatened termination (in writing) thereof and (iii) otherwise keep the Company reasonably informed of the status of its efforts to arrange the Financing (or any alternative financing). In any case in which Parent or its Affiliates or any of the Lenders asserts for any reason that the Financing will not or is not expected to be available at the Closing, Parent shall promptly afford to the Company reasonable access to Parent's, Merger Sub's and Madison Dearborn Partners, LLC's employees, accountants (if relevant) and counsel (by phone or in person, if reasonably requested) for the purpose of discussing the circumstances of such unavailability, *provided* that only those of Madison Dearborn Partners, LLC's employees that participated regularly in the negotiation of the transactions contemplated by this Agreement shall be subject to this provision.

(g) Subject to Section 4.12(a) (*Parent and Merger Sub Indemnification*), during the Pre-Closing Period, the Company shall and shall cause its Subsidiaries to, at Parent's sole expense, use its and their reasonable best efforts to cooperate in connection with the arrangement of the Financing as may be reasonably requested by Parent (*provided* that such requested cooperation is otherwise not in contravention with this Agreement and does not unreasonably interfere with the ongoing operations of the Company and its subsidiaries relative to what similar types of financings contemplated by the Debt Commitment Letter would reasonably be expected to cause). Such cooperation by the Company shall include, at the

reasonable request of Parent, (a) agreeing to enter into such agreements and deliver such officer's certificates (including, without limitation, delivery of a solvency certificate of the chief financial officer of the Company in the form attached as Annex I to Exhibit D to the Debt Commitment Letter), as are customary in financings of such type and as are, in the good faith determination of the Persons executing such officer's certificates, accurate, and agreeing to pledge, grant security interests in, and otherwise grant liens on, the Company's assets pursuant to such agreements as may be reasonably requested, and (b) subject to Section 4.5 (*Access to Information*), providing to the Lenders financial, due diligence and other information in the Company's possession with respect to the Merger, making the Company's executive officers, representatives and advisors available to assist the Debt Financing Sources and otherwise reasonably cooperating in connection with the consummation of the Financing (including participating in a reasonable number of meetings and conference calls (including customary one-on-one meetings with the parties acting as lead arrangers, bookrunners or agents for, and prospective lenders of, the Debt Financing and senior management (with appropriate seniority and expertise) of the Company and its Subsidiaries), presentations and sessions with prospective lenders, investors and ratings agencies in connection with any of such Debt Financing), (c) reasonably cooperating with the marketing efforts of Parent and the Debt Financing Sources for any of such Debt Financing, (d) reasonably cooperating with Parent and the Debt Financing Sources in the preparation of customary bank information memoranda, confidential information memoranda, lenders' presentations and similar documents and other customary marketing materials for prospective lenders and materials for rating agency presentations (and, in connection with any alternative financing, offering documents and private placement memoranda) and in the negotiation of definitive transaction documents for the Debt Financing, in each case to the extent customarily required for financings of such type, (e) providing customary authorization letters to the Debt Financing Sources under the Debt Commitment Letters authorizing the distribution of information to other prospective lenders and containing customary representations to the Lenders under the Debt Commitment Letter, including that (A) as of the date of furnishment of any such information, that such information does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading (and promptly updating and correcting any information in order to ensure such information does not contain any such material misstatement or material omission) and (B) to the extent such information is provided to prospective lenders that are "public side" lenders such information consists exclusively of either (x) information that would be made publicly available (or could be derived from publicly available information) if the Company and its Subsidiaries were to become reporting companies, (y) information not material with respect to the Company, its Subsidiaries, the transactions contemplated by this Agreement or any of their respective securities for purposes of United States federal and state securities laws or (z) information of a type that would customarily be publicly disclosed in connection with any issuance by the Company or its Subsidiaries of any debt or equity securities issued pursuant to a public offering, Rule 144A offering or other private placement where assisted by a placement agent, (f) preventing the announcement, offer, placement, issuance or arrangement of any debt securities or bank or other credit facilities (including refinancing and renewals of debt but excluding the credit facilities contemplated by the Debt Commitment Letter and indebtedness expressly permitted under Section 4.1 (*Conduct*

of Business of the Company)) by or on behalf of the Company or any of its Subsidiaries, (g) reasonably cooperating with Parent in securing (x) public corporate/family ratings from Moody's Investors ("**Moody's**") and S&P Global Inc. ("**S&P**") for the borrower under the Debt Financing and (y) public ratings for the Debt Financing contemplated by the Debt Commitment Letter, in each case, from each of Moody's and S&P; (h) taking all actions reasonably requested by Parent (including the furnishing of information) to permit the consummation of the Debt Financing and to permit the proceeds thereof to be made available to Parent at Closing, including to permit any cash and marketable securities of the Company and its Subsidiaries to be made available to Parent on the Closing Date as more particularly set forth in this Agreement; (i) taking all corporate, limited liability company or similar administrative or organizational actions reasonably necessary to permit the consummation of the Debt Financing, such as by having the board of directors, managers, members, or other equivalent governing bodies of the Company's Subsidiaries provide, and causing their respective representatives to provide, any resolutions, consents or approvals on behalf of such Subsidiaries as may be required by the Lenders pursuant to the Debt Commitment Letter at or as of the Closing; (j) furnishing to Parent and its Lenders at least three (3) Business Days prior to the Closing Date all documentation and other information with respect to the Company and its Subsidiaries required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act, *provided* such request is made at least ten (10) Business Days prior to the Closing Date; (k) obtaining customary accountants' consents with respect to financial information derived from the financial statements of Company, and using reasonable best efforts to provide the financial information requested by the Company's accounting firm to enable it to comply with such request, and assisting Parent and its counsel in such counsel delivering customary legal opinions in connection with effectuating the Debt Financing, in each case, at the expense of and as reasonably requested by Parent; (l) reasonably cooperating with the Lenders to ensure that the syndication efforts benefit from the Company's existing banking relationships; and (m) as applicable, arranging customary payoff letters, lien terminations and instruments of discharge or release to be delivered at Closing (which final draft forms shall be delivered at least two (2) Business Days prior to Closing) that release the Company, its Subsidiaries and their respective assets from all Payoff Indebtedness and discharge all Liens and security interests with respect thereto. In addition to and not in limitation of the other provisions of this Agreement, the Company shall deliver to Parent, as promptly as practicable, the Required Financial Information. Parent shall promptly reimburse the Company for any out-of-pocket expenses and costs incurred in connection with the Company's or its Affiliates' obligations under this Section 4.12(g). Notwithstanding anything in this Agreement to the contrary, (i) nothing in this Agreement shall require any cooperation (x) to the extent that it would require the Company or any of its Subsidiaries to take any action or the Company or any of its Subsidiaries or Representatives, as applicable, to waive or amend any terms of this Agreement, agree to pay any commitment or other fees or reimburse any expenses prior to the Effective Time or to approve the execution or delivery of any document or certificate in connection with the Financing (or any alternative financing), other than the authorization letters referred to above, that becomes effective prior to the Closing or (y) to the extent it would require the Company or any of its Subsidiaries to obtain or provide audited financial statements which are not otherwise in the possession of the Company, (ii) no officer of the Company or any

of its Subsidiaries who is not reasonably expected to be an officer of the Surviving Corporation shall be obligated to deliver any certificate in connection with the Financing and no counsel for the Company or any of its Subsidiaries shall be obligated to deliver any opinion in connection with the Financing, (iii) irrespective of the above, no obligation of the Company or any of its Subsidiaries under any certificate, document or instrument (other than the authorization letters referred to above) shall be effective until the Effective Time and none of the Company or any of its Subsidiaries shall be required to take any action under any certificate, document or instrument that is not contingent upon the Closing (including entry into any agreement that is effective before the Effective Time) or that would be effective prior to the Effective Time; and (iv) the Company's board of directors will not be required to adopt resolutions approving the agreements, documents and instruments pursuant to which the Debt Financing is obtained.

(h) The Company hereby consents to the use of (i) all logos of the Company and its Subsidiaries in connection with the Financing so long as such logos are used solely in a manner that is not intended to or likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries and (ii) the use of the Required Financial Information, and, as of the date hereof, the Company is not aware of any limitation on the use of such financials statements contained in the Required Financial Information by Ernst & Young LLP.

4.13 **Tax Matters**.

(a) Company Responsibility for Filing Tax Returns. Subject to Section 4.1(b)(xi) (*Conduct of Business of the Company-Make Material Changes in respect of Taxes*), the Company shall prepare and file or cause to be prepared and filed all Tax Returns related to the Company that are required to be filed prior to or on the Closing Date. The Company shall prepare such Tax Returns in a manner consistent with its past practices, unless otherwise required by applicable Law. The Company shall provide each such Tax Return to Parent at least thirty (30) days prior to the due date of such Tax Return (or, in the case of Tax Returns due in less than thirty (30) days after the date hereof or in the case of non-Income Tax Returns, as soon as reasonably practicable) for Parent's review and comment. Each such Tax Return shall be final and binding on the Company and Parent unless, within twenty (20) days after the date of receipt by Parent of such Tax Return and no later than ten (10) days prior to the due date of such Tax Return (or, in the case of Tax Returns due in less than thirty (30) days after receipt by Parent of such Tax Return, as soon as reasonably practicable), Parent delivers to the Company a written request for changes to such Tax Return. If Parent delivers such a request, then the Company shall make or cause to be made such changes to such Tax Return as are reasonably requested by Parent except to the extent such changes are inconsistent with past practice or applicable Law and would reduce the amount the Securityholders would otherwise be entitled to pursuant to Section 4.13(j) (*Transaction Tax Deductions*) hereof. If the Parties are unable to reach an agreed position on the tax item or items in question, the dispute shall be resolved by the Accounting Firm taking into account the principles of this Section 4.13(a) in a manner substantially similar to the procedures set forth in Section 1.9(e) (*Dispute Resolution*) herein. If such Tax Return must be filed before the Accounting Firm reaches its decision, the Tax

Return shall be filed taking the positions determined by the Company and shall be subsequently amended if necessary, to reflect the Accounting Firm's decision. In furtherance of and in accordance with the foregoing, prior to the Closing, the Company shall amend its Tax Returns with respect to the 2013 Tax year in order to address the improper use of net operating losses in such Pre-Closing Tax Period, and the Company will establish a reserve or accrual (to the extent not already established) for the amount of additional Taxes arising out of such amendment.

(b) Parent Responsibility for Filing Tax Returns. Parent shall prepare and file or cause to be prepared and filed all Tax Returns required to be filed by or with respect to the Company that are due after the Closing Date. With respect to any Tax Returns for any taxable period ending on or prior to the Closing Date (a "**Pre-Closing Taxable Period**"), Parent shall prepare such Tax Returns in a manner consistent with past practice of the Company, unless otherwise required by applicable Law. Parent shall provide each such Tax Return with respect to a Pre-Closing Taxable Period to the Seller Representative at least thirty (30) days prior to the due date of such Tax Return (or, in the case of Tax Returns due in less than thirty (30) days after the Closing or in the case of non-Income Tax Returns, as soon as reasonably practicable) for the Seller Representative's review and comment. Each such Tax Return shall be final and binding on the Seller Representative and Parent unless, within twenty (20) days after the date of receipt by the Seller Representative of such Tax Return and no later than ten (10) days prior to the due date of such Tax Return (or, in the case of Tax Returns due in less than thirty (30) days after receipt by the Seller Representative of such Tax Return, as soon as reasonably practicable), the Seller Representative delivers to Parent a written request for changes to such Tax Return that adequately demonstrates both (i) that Parent's failure to make such requested changes would reduce the amount the Securityholders would otherwise be entitled to pursuant to Section 4.13(j) (*Transaction Tax Deductions*) hereof, and (ii) that either (x) such Tax Return or the applicable portion thereof was prepared in a manner inconsistent with past practice of the Company (and such inconsistency is not required by applicable Tax Law), or (y) that there is no historical practice of the Company applicable to the Tax matter at issue in the written request and that the Tax position requested by the Seller Representative is more certain under applicable Tax Law than the position taken on such Tax Return or portion thereof. If the Seller Representative delivers a request it reasonably believes satisfies the requirements of the preceding sentence, then Parent shall make such requested changes unless Parent reasonably believes that such changes do not satisfy the requirements of the preceding sentence, in which case Parent and the Seller Representative shall cooperate in good faith to resolve such disagreement. If the parties are unable to reach an agreed position with respect to such Tax position or positions in question, the dispute shall be resolved by the Accounting Firm in a manner substantially similar to the procedures set forth in Section 1.9(e) (*Dispute Resolution*) herein, *provided* that notwithstanding Section 1.9(e)(v) (*Dispute Resolution - Fees*), (i) the Seller Representative will be responsible for all costs, fees, and expenses relating to the Accounting Firm's review of any requested changes that are not made to the applicable Tax Returns of the Company or its Subsidiaries, (ii) Parent will be responsible for all costs, fees and expenses relating to the Accounting Firm's review of any requested changes that are made to the applicable Tax Returns of the Company or its Subsidiaries and (iii) Seller Representative and Parent shall each be responsible for one-half of any costs, fees and expenses relating to the Accounting Firm's review not covered by clause (i)

or (ii) above. If such Tax Return must be filed before the Accounting Firm reaches its decision, the Tax Return shall be filed taking the positions determined by the Parent and shall be subsequently amended if necessary, to reflect the Accounting Firm's decision.

(c) Cooperation on Tax Matters. Parent, the Company and the Seller Representative shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Section 4.13 for any Pre-Closing Taxable Period and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and the making available of employees on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Parent, the Company and the Seller Representative agree to retain all financial books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the applicable statute of limitations (and, to the extent notified by Parent or the Seller Representative, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Tax Authority.

(d) Tax Contests. After the Closing, Parent shall have the right to defend or prosecute and the right to control the initiation, defense, prosecution and settlement of any claim or voluntary disclosure process with respect to Taxes for any Pre-Closing Taxable Period or Straddle Period (each, a "**Tax Proceeding**"). With respect to any Tax Proceeding relating to (A) Income Taxes, to the extent such Tax Proceeding could reasonably be expected to reduce any amounts payable under Section 4.13(j) (*Transaction Tax Deductions*), or (B) [redacted] Section 7.2(a) [redacted]), Parent (i) will at the Seller Representative's request provide the Seller Representative with a reasonable update on the status of such Tax Proceeding (subject to customary obligations of confidentiality and protection of privilege), (ii) will consider in good faith any reasonable comments or suggestions of Seller Representative in respect thereof, and (iii) will conduct such Tax Proceeding in good faith. The provisions of this Section 4.13(d), rather than Section 7.3(c) (*Third Party Claims - Resolution of Objection to Claims*), Section 7.3(d) (*Third Party Claims - Control*), Section 7.3(e) (*Costs and Expenses*), Section 7.3(f) (*Third Party Claims - Settlements*), Section 7.3(g) (*Third Party Claims - Cooperation*) and Section 7.3(h) (*Third Party Claims - Seller Representative*), shall govern any Tax Proceedings relating to Taxes, [redacted]

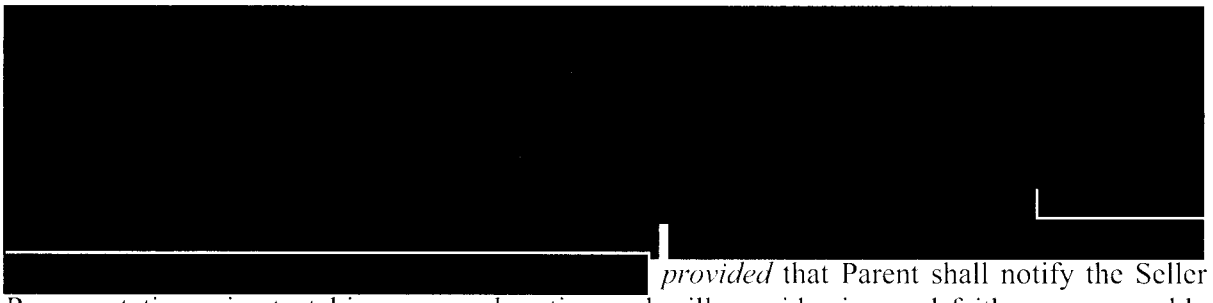
(e) Tax Sharing Agreements. All Tax allocation agreements, Tax indemnity obligations, and similar agreements, arrangements, understandings, and practices with respect to Taxes to which the Company or any Subsidiary is a party to or bound, and all powers of attorney with respect to Taxes relating to the Company or any Subsidiary, will be terminated as of the Closing Date and, after the Closing Date, neither the Company nor any of its Subsidiaries will not be bound thereby or have any liability thereunder.

(f) Closing of Tax Period. The Parties shall, to the fullest extent permitted or required under applicable law, treat the Closing Date as the last day of the taxable period of the Company and its Subsidiaries for all Tax purposes, and Parent shall cause the Company and its Subsidiaries to join the "consolidated group" (as defined in Treasury Regulations Section 1.1502-76(h)) of a Subsidiary of Parent effective on the day after the Closing Date.

(g) Straddle Period Allocation. For purposes of this Agreement, in the case of any taxable period that begins on or before and ends after the Closing Date (a "**Straddle Period**"), the amount of Taxes attributable to the portion of the Straddle Period ending on the Closing Date shall be deemed to be (i) in the case of Taxes imposed on a periodic basis (such as certain franchise Taxes, real or personal property Taxes), the amount of such Taxes for the entire period multiplied by a fraction, the numerator of which is the number of calendar days in the Straddle Period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire relevant Straddle Period and (ii) in the case of Taxes not described in clause (i) above (such as Taxes that are based upon or related to income or receipts, based upon occupancy or imposed in connection with any sale, purchase or other transfer or assignment of property (real or personal, tangible or intangible)), the amount of any such Taxes shall be determined as if such taxable period ended as of the close of business on the Closing Date (and for such purposes, the taxable period of any partnership or other pass-through entity owned by any Person shall be deemed to end as of the close of business on the Closing Date).

(h) Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, recordation, conveyance and other similar Taxes and fees (including any penalties and interest) (the "**Transfer Taxes**") incurred in connection with this Agreement will be borne fifty percent (50%) by Parent, on the one hand, and fifty percent (50%) by the Seller Representative (on behalf of the Securityholders in accordance with their respective Pro Rata Portions), on the other hand. The Surviving Corporation will file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable law, the Company and Parent will, and will cause their respective Affiliates to, join in the execution of any such Tax Returns and other documentation.

(i) No Amendments. From and after the Closing, the Company and its Subsidiaries shall not, and Parent and its Affiliates shall not cause or permit the Company or its Subsidiaries to, (i) amend any Tax Return of the Company or its Subsidiaries with respect to any Pre-Closing Taxable Period other than Tax Returns [redacted], (ii) [redacted]



provided that Parent shall notify the Seller Representative prior to taking any such action and will consider in good faith any reasonable comments or suggestions of Seller Representative in respect thereof.

(j) Transaction Tax Deductions. To the extent permitted by applicable Tax law, Parent will cause the Company and its Subsidiaries to (i) claim any Transaction Tax Deductions in its Pre-Closing Taxable Period ending on the Closing Date and (ii) elect to carry back any net operating loss for such period. The Securityholders shall be entitled to (1) any refund or credit of Income Taxes actually paid by the Company or its Subsidiaries prior to the Closing Date for any Pre-Closing Taxable Period to the extent that such refund or credit is attributable to the Transaction Tax Deductions or the carryback of a net operating loss attributable to such Transaction Tax Deductions (with such Transaction Tax Deductions treated as the last deductions claimed in such Pre-Closing Taxable Period for this purpose) and (2) the amount by which (x) the Income Tax Reserve exceeds (y) the amount of Income Taxes for any Pre-Closing Taxable Period that are required to be paid after the Closing by the Surviving Corporation, to the extent such difference results from the Transaction Tax Deductions (with such Transaction Tax Deductions treated as the last deductions claimed in any Pre-Closing Taxable Period for this purpose). Parent shall file such Tax Returns (or other requests for refunds, but not any refund claims pursuant to IRS Form 1139 or any similar state processes) for the Pre-Closing Taxable Period as are reasonably requested by the Seller Representative to obtain or secure any amounts to which the Securityholders may be entitled pursuant to the preceding sentence, and Parent shall afford the Seller Representative and its Representatives reasonable access to the books and records and management of the Company and its Subsidiaries in furtherance of the foregoing. The Surviving Corporation shall deliver and pay over to the Paying Agent (on behalf of the Securityholders) any amounts described in the second sentence of this Section 4.13(j) as soon as reasonably practicable after receipt or actual realization thereof (which, in the case of a Tax described in clause (2) of the second sentence of this Section 4.13(j), shall be when such Tax would have been payable to the relevant Tax authority in the absence of Transaction Tax Deductions), net of (a) any Taxes imposed with respect to the receipt or payment of such refund or credit, and (b) the amount of any Closing Tax Refund Payments (as defined below) actually paid to the Optionholders. The Securityholders shall not be entitled to any refund or credit attributable to (i) the carryback of net operating losses or other Tax attributes economically generated after the Closing Date or the carryback of losses sustained by the Company or its Subsidiaries after December 31, 2016 and prior to the Closing Date other than in respect of Transaction Tax Deductions or (ii) the use of any net operating loss of the Company attributable to Transaction Tax Deductions in a Post-Closing Taxable Period. At least three (3) business days prior to Closing, the Company shall prepare an estimate of the aggregate amounts

that would reasonably be expected to be paid to the Securityholders pursuant to this Section 4.13(j), which calculation shall be reasonably acceptable to Parent (the "**Estimated Tax Refund Amount**"). At Closing, Parent shall pay to the Company, for payment to each of the Optionholders set forth on Section 4.13(j) of the Disclosure Schedule, an amount for each such Optionholder equal to the portion of the Estimated Tax Refund Amount that would be allocable to such Optionholder under Section 1.6(c) (*Effect on Company Options*) and Section 1.6(e) (*Post-Closing Payments*) if the entire Estimated Tax Refund Amount were to be paid to all Securityholders at Closing (the "**Closing Tax Refund Payments**"). Thereafter, any payments payable to the Seller Representative after the Closing pursuant to this Section 4.13(j) (which for the avoidance of doubt shall be determined net of the Closing Tax Refund Payments) (the "**Post-Closing Tax Refund Payments**") shall be allocated by the Seller Representative among the Securityholders (other than the Optionholders set forth on Section 4.13(j) of the Disclosure Schedule) in accordance with the relative Pro Rata Portions of such other Securityholders (the "**Per Share Tax Refund Amounts**"), *provided*, that if the aggregate Per Share Tax Refund Amount exceeds the portion of the Closing Tax Refund Payments that each Optionholder set forth on Section 4.13(j) of the Disclosure Schedule received in respect of each share of Company Capital Stock underlying such Company Options, then the Post-Closing Tax Refund Payments shall be allocated by the Seller Representative among all of the Securityholders (including the Optionholders set forth on Section 4.13(j) of the Disclosure Schedule), such that all Securityholders, on a cumulative basis, receive their Pro Rata Portion of the full amount due to Securityholders under this Section 4.13(j) (it being understood that, post-Closing, the Optionholders set forth on Section 4.13(j) of the Disclosure Schedule shall only receive amounts that are in excess of their applicable portion of the Closing Tax Refund Payments) and the Per Share Tax Refund Amount shall be appropriately adjusted. Notwithstanding anything to the contrary herein, in calculating the Estimated Tax Refund Amount, the Closing Tax Refund Payments or the Per Share Tax Refund Amounts, any deductions of the Company or its Subsidiaries resulting from or attributable to (i) any expenses incurred or assumed by Parent, Merger Sub or their Affiliates (other than the Company and its Subsidiaries), (ii) any activities or transactions on the Closing Date after the Closing outside of the ordinary course of business or (iii) any expenses of Parent, Merger Sub or their Affiliates that are assumed by the Company or its Subsidiaries at or after the Closing, that, in each case, do not constitute Transaction Tax Deductions, shall be taken into account after the Transaction Tax Deductions.

(k) [redacted]

4.14 **Stockholders Agreement**. Prior to the Closing, (i) the Seller Representative and the Company shall use reasonable best efforts to enforce the transfer restrictions in the Stockholders Agreement or any other existing stockholders or other agreements with the

Company's or its Subsidiaries' stockholders and shall not consent to or approve any such transfer for which the Seller Representative's or the Company's or any of its Subsidiaries' consent, cooperation or approval is required and (ii) the Seller Representative and the Company shall, and shall cause the Oak Hill Stockholders (as defined in the Stockholders Agreement) to, to the extent required to have holders of at least ninety-nine percent (99%) of the Company Common Stock execute a Stockholder Written Consent and a Securityholder Support Agreement, deliver notice of the exercise of the drag-along rights set forth in Section 3.2 of the Stockholders Agreement in connection with the Merger, and use commercially reasonable efforts to enforce such rights.

4.15 **Use of Cash**. Notwithstanding anything to the contrary in this ARTICLE IV, at or prior to the Effective Time, the Company shall, and shall cause each of its Subsidiaries to, utilize its available cash, cash equivalents and marketable securities to pay outstanding Payoff Indebtedness of the Company and its Subsidiaries and/or unpaid amounts which would constitute Unpaid Transaction Expenses to the extent remaining outstanding as of immediately prior to the Effective Time, such that Closing Cash does not exceed $[redacted].

ARTICLE V
CONDITIONS TO THE MERGER

5.1 **Conditions to the Obligations of Each Party to Effect the Merger**. The respective obligations of each party hereto to effect the Transactions (including the Merger) shall be subject to the satisfaction or (to the extent permitted by Law) written waiver by the Company and Parent, at the Closing, of the following conditions:

(a) No Laws. No Governmental Authority of competent jurisdiction shall have enacted, issued or promulgated any Law that is in effect and has the effect of making the Transactions (including the Merger) illegal or which has the effect of prohibiting or otherwise preventing the consummation of the Transactions (including the Merger).

(b) No Orders. No Governmental Authority of competent jurisdiction shall have issued or granted any Order that is in effect and has the effect of making the Transactions (including the Merger) illegal or which has the effect of prohibiting or otherwise preventing the consummation of the Transactions (including the Merger).

(c) No Governmental Litigation. There shall be no legal action or suit pending against Parent or the Company (a) by any Governmental Authority of competent jurisdiction or (b) before any Governmental Authority of competent jurisdiction to the extent such legal action has a reasonable likelihood of success on the merits, in each of clauses (a) or (b), seeking to prohibit or otherwise prevent the consummation of the Transactions (including the Merger).

(d) Stockholder Approval. The Requisite Stockholder Approval shall have been obtained and shall be valid and in full force and effect.

(e) [redacted]

(f) Antitrust Filings. (i) All waiting periods (and extensions thereof) applicable to the Transactions (including the Merger) under the HSR Act shall have expired or otherwise been terminated, and (ii) all clearances, consents, approvals, orders and authorizations of Governmental Authorities required by the Antitrust Laws of the jurisdictions set forth on Annex I shall have been obtained, and all waiting periods (and extensions thereof) applicable to the Transactions (including the Merger) under the Antitrust Laws of the jurisdictions set forth on Annex I shall have expired or otherwise been terminated.

5.2 **Additional Conditions to the Obligations of Parent and Merger Sub**. The obligation of Parent and Merger Sub to effect the Transactions (including the Merger) also shall be subject to the satisfaction at the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Parent and Merger Sub:

(a) Representations and Warranties. (i) Each of the Company Fundamental Representations shall be true and correct in all respects (except (A) for inaccuracies set forth in Section 2.2 (*Company Capital Structure*) and, with respect to the Subsidiaries set forth on Section 5.2(a) of the Disclosure Schedule, Section 2.3 (*Subsidiaries*), in each case, which would not reasonably be expected to adversely affect Parent or the Surviving Corporation on or after the Closing in any material respect or their ability to consummate the Transactions and (B) to the extent of any *de minimis* inaccuracies) on and as of each of the date hereof and the Closing Date with the same force and effect as if made on and as of each such date (except for those Company Fundamental Representations which address matters only as of a particular date, which shall have been true and correct in all respects (except (x) for inaccuracies set forth in Section 2.2 (*Company Capital Structure*) and, with respect to the Subsidiaries set forth on Section 5.2(a) of the Disclosure Schedule, Section 2.3 (*Subsidiaries*), in each case, which would not reasonably be expected to adversely affect Parent or the Surviving Corporation on or after the Closing in any material respect or their ability to consummate the Transactions and (y) to the extent of any *de minimis* inaccuracies) on and as of such particular date) and (ii) each of the other representations and warranties of the Company contained in ARTICLE II (*Representations and Warranties of the Company*) of this Agreement (interpreted without giving effect to any limitation or qualification based on materiality, Company Material Adverse Effect or other terms of similar import or effect) shall be true and correct on and as of the date hereof and the Closing Date with the same force and effect as if made on and as of the Closing Date (except for those representations and warranties which address matters only as of a particular date, which shall have been true and correct as of such particular date), except, in the case of this clause (ii), for any such representations and warranties where the failure to be so true and correct, individually

or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect.

(b) Covenants. The Company shall have performed and complied in all material respects with all covenants and agreements under this Agreement required to be performed and complied with by the Company at or prior to the Closing.

(c) No Material Adverse Effect. Since the date of the Current Balance Sheet there shall not have occurred a Company Material Adverse Effect.

(d) Certificate of the Company. Parent shall have received (i) a certificate, validly executed on behalf of the Company by an executive officer of the Company, to the effect that, as of the Closing, the conditions to the obligations of Parent and Merger Sub set forth in Section 5.2(a) (*Additional Conditions to the Obligations of Parent and Merger Sub-Representations and Warranties*), Section 5.2(b) (*Additional Conditions to the Obligations of Parent and Merger Sub-Covenants*), and Section 5.2(c) (*Additional Conditions to the Obligations of Parent and Merger Sub-No Material Adverse Effect*) have been satisfied and attaching an updated Section 2.2(a) and Section 2.2(b) of the Disclosure Schedule which is true and correct in all respects as of immediately prior to the Effective Time and (ii) the Pre-Closing Statement, the Payment Spreadsheet and the other items required to be delivered by the Company pursuant to Sections 1.2(b) (*Closing-Party Deliveries*) and 1.2(c) (*Closing-Company Deliveries*) above.

(e) Third Party Agreements. The Company shall have delivered to Parent (i) consents to the Transactions executed by the Persons set forth on Section 5.2(e)(i) of the Disclosure Schedule, (ii) Stockholder Written Consents executed by holders of Company Capital Stock representing at least ninety-five percent (95%) of the outstanding Company Capital Stock and (iii) Securityholder Support Agreements executed by Securityholders representing at least ninety-five percent (95%) of the outstanding Company Capital Stock as of immediately prior to the Effective Time (including, in any event, a Major Securityholder Support Agreement executed by each Major Securityholder and an Other Securityholder Support Agreement executed by each Securityholder listed on Section 1.2(c)(i)(B) of the Disclosure Schedule).

(f) Exercise of Drag-Along. The Oak Hill Stockholders (as defined in the Stockholders Agreement) shall have exercised the drag-along rights set forth in Section 3.2 of the Stockholders Agreement in connection with the Merger unless holders of at least ninety-nine percent (99%) of the Company Common Stock have executed a Stockholder Written Consent and a Securityholder Support Agreement.

(g) Closing Cash. The Company shall have performed and complied in all respects with the covenant set forth in Section 4.15 (*Use of Cash*) and shall have delivered evidence reasonably acceptable to Parent that, subject to any payments to be made at the Closing, Closing Cash does not exceed $[redacted].

5.3 **Additional Conditions to the Obligations of the Company**. The obligation of the Company to effect the Transactions (including the Merger) also shall be subject to the satisfaction at the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations and Warranties. (i) Each of the Parent Fundamental Representations shall be true and correct in all respects (except to the extent of any *de minimis* inaccuracies) on and as of each of the date hereof and the Closing Date with the same force and effect as if made on and as of each such date (except for those Parent Fundamental Representations which address matters only as of a particular date, which shall have been true and correct in all respects (except to the extent of any *de minimis* inaccuracies) on and as of such particular date) and (ii) each of the other representations and warranties of Parent and Merger Sub contained in ARTICLE III (*Representations and Warranties of Parent and Merger Sub*) of this Agreement (interpreted without giving effect to any limitation or qualification based on materiality, Parent Material Adverse Effect or other terms of similar import or effect) shall be true and correct on and as of the date hereof and the Closing Date with the same force and effect as if made on and as of the Closing Date (except for those representations and warranties which address matters only as of a particular date, which shall have been true and correct as of such particular date), except, in the case of this clause (ii), for any such representations and warranties where the failure to be so true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

(b) Covenants. Each of Parent and Merger Sub shall have performed and complied in all material respects with all covenants and agreements under this Agreement required to be performed and complied by Parent and/or Merger Sub at or prior to the Closing.

(c) Certificate of Parent. The Company shall have received a certificate, validly executed on behalf of Parent by an executive officer of Parent, to the effect that, as of the Closing, the conditions to the obligations of the Company set forth in Section 5.3(a) (*Additional Conditions to the Obligations of the Company-Representation and Warranties*) and Section 5.3(b) (*Additional Conditions to the Obligations of the Company-Covenants*) have been satisfied.

ARTICLE VI
TERMINATION, AMENDMENT AND WAIVER

6.1 **Termination**. This Agreement may be terminated and the Merger and the other Transactions may be abandoned at any time prior to the Effective Time:

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

(b) by Parent or the Company if the Effective Time has not occurred before 11:59 p.m. (Pacific time) on [redacted] (the "**Outside Date**"); *provided*, that neither Parent nor the Company shall have the right to terminate this Agreement pursuant to this Section 6.1(b) if the other Party has formally initiated proceedings to specifically enforce (i) Parent's or the

Company's (as applicable) obligation to consummate the Merger and cause the Closing to occur in accordance with the terms of this Agreement (including, in the case of the Company, Section 8.10(c) (*Specific Performance in connection with Financing*)) or (ii) any of Parent's or the Company's (as applicable) obligations pursuant to Section 4.7 (*Reasonable Best Efforts*), Section 4.8 (*Regulatory Filings*) or Section 4.12 (*Financing*), in the case of each of clauses (i) and (ii), while such proceedings are still pending or the Order resulting therefrom is being enforced; *provided further*, that if all of the conditions set forth in ARTICLE V (*Conditions to the Merger*) (other than those conditions that by their nature are to be satisfied at the Closing, each of which is capable of being satisfied at the Closing) have been satisfied or waived, then neither Parent nor the Company shall have the right to terminate this Agreement pursuant to this Section 6.1(b) unless and until the Marketing Period has ended or, if earlier, the date that the commitments under the Debt Commitment Letter expire;

(c) by Parent or the Company if any Governmental Authority of competent jurisdiction (i) shall have enacted, issued or promulgated any Law that is in effect and has the permanent effect of making the Merger or the other Transactions illegal or which has the permanent effect of prohibiting or otherwise preventing the consummation of the Merger or the other Transactions, or (ii) shall have issued or granted any Order that is in effect and has the permanent effect of making the Merger or the other Transactions illegal or which has the permanent effect of prohibiting or otherwise preventing the consummation of the Merger or the other Transactions, and such Order shall have become final and non-appealable;

(d) by Parent if it is not in material breach of any of its representations, warranties or covenants under this Agreement and there has been a breach or inaccuracy of any representation, warranty, covenant or agreement of the Company contained in this Agreement such that the conditions set forth in Section 5.2(a) (*Additional Conditions to the Obligations of Parent and Merger Sub-Representations and Warranties*) or Section 5.2(b) (*Additional Conditions to the Obligations of Parent and Merger Sub-Covenants*) hereof would not be satisfied and such breach or inaccuracy has not been cured within thirty (30) calendar days after written notice thereof to the Company;

(e) by the Company if it is not in material breach of any of its representations, warranties or covenants under this Agreement and there has been a breach or inaccuracy of any representation, warranty, covenant or agreement of Parent or Merger Sub contained in this Agreement such that the conditions set forth in Section 5.3(a) (*Additional Conditions to the Obligations of the Company-Representations and Warranties*) or Section 5.3(b) (*Additional Conditions to the Obligations of the Company-Covenants*) hereof would not be satisfied and such breach or inaccuracy has not been cured within thirty (30) calendar days after written notice thereof to Parent;

(f) by the Company if it is not in material breach of any of its obligations under this Agreement and (i) all of the conditions set forth in Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*) and Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*) (other than those conditions that by their nature are to be

satisfied at the Closing, each of which is capable of being satisfied at the Closing) have been satisfied or waived, Parent and Merger Sub are required to complete the Closing and consummate the Merger pursuant to Section 1.2(a) (*Closing*) and Parent and Merger Sub fail to consummate the Merger by the date the Closing is required to have occurred pursuant to Section 1.2(a) (*Closing*), (ii) the Company has irrevocably certified to Parent and Merger Sub in writing that all conditions set forth in Section 5.3 (*Additional Conditions to the Obligations of the Company*) have been satisfied or that it is waiving any unsatisfied conditions in Section 5.3 (*Additional Conditions to the Obligations of the Company*) and that it is ready, willing and able to consummate the Closing and the Merger and (iii) Parent and Merger Sub fail to consummate the Merger within three (3) Business Days following receipt by Parent and Merger Sub of such written notice from the Company; or

(g) by Parent, after twenty-four (24) hours after the execution of this Agreement, unless prior to such termination, Stockholder Written Consents executed by holders of Company Capital Stock representing at least ninety-five percent (95%) of the outstanding Company Capital Stock have been delivered to Parent.

6.2 **Effect of Termination**. Any proper and valid termination of this Agreement pursuant to Section 6.1 (*Termination*) shall be effective immediately upon the delivery of written notice of the terminating party to the other parties hereto, as applicable, specifying the provisions hereof pursuant to which such termination is made and the basis therefor described in reasonable detail. In the event of termination of this Agreement as provided in Section 6.1 (*Termination*), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of any party or their respective Representatives; *provided, however*, that, the provisions of Section 4.6 (*Public Disclosure*), Section 4.12(a) (*Financing-No Responsibility of Company and Affiliates and Representatives*), Section 6.3 (*Termination Fee*), ARTICLE VIII (*General Provisions*) and this Section 6.2 (*Effect of Termination*) shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this ARTICLE VI. In addition to the foregoing, no termination of this Agreement shall affect the obligations of the parties hereto set forth in the Confidentiality Agreement or the Guaranty, all of which obligations shall survive termination of this Agreement in accordance with their terms.

6.3 **Termination Fee**.

(a) If this Agreement is terminated (i) by the Company pursuant to Section 6.1(e) (*Parent or Merger Sub Breach*) or Section 6.1(f) (*Failure to Close*) or (ii) by the Company or Parent pursuant to Section 6.1(b) (*End Date*) if, (x) at the time of such termination, the Company would have been entitled to terminate this Agreement pursuant to Section 6.1(e) (*Parent or Merger Sub Breach*) or Section 6.1(f) (*Failure to Close*) (including, for the avoidance of doubt, having satisfied each of the requirements therein, including required notices, cure periods and the absence of a material breach by the Company) and (y) in the case of a Termination by the Company, the written notice of termination includes an assertion that the Termination Fee is due and payable, or, in the case of a termination by Parent, the Company provides written notice to Parent within two (2) Business Days of such termination asserting that

the Termination Fee is due and payable, then Parent shall pay, or cause to be paid, to the Company an amount equal to $[redacted] (the "**Termination Fee**") not later than the second (2nd) Business Day following such termination by wire transfer of immediately available funds to an account or accounts designated in writing by the Company. The parties hereto acknowledge and hereby agree that in no event shall Parent be required to pay the Termination Fee on more than one occasion, whether or not the Termination Fee may be payable under more than one provision of this Agreement at the same or at different times and the occurrence of different events.

(b) Notwithstanding the right at any time of the Company to terminate this Agreement and receive the Termination Fee as provided in Section 6.3(a) (*General Provision of Termination Fee*) above, it is explicitly agreed that the Company shall be entitled at any time prior to a termination of this Agreement, including as an alternative to such a termination if available, to obtain an injunction or specific performance in accordance with Section 8.10 (*Remedies*), including with respect to matters necessary to cause the conditions to funding of the Financing to be satisfied or to cause Parent and Merger Sub to comply with their respective obligations under Section 4.12 (*Financing*) with respect to the Debt Financing. The Company's pursuit of any injunction or specific performance in accordance with Section 8.10 (*Remedies*) shall not be deemed to cure any breach or non-compliance by Parent, Merger Sub, the Guarantors or the Debt Financing Sources of their respective obligations under this Agreement or the Financing Agreements, or to otherwise limit or affect the rights, obligations or remedies available hereunder to the Company, and shall also not preclude the ability of the Company to elect to receive the Termination Fee as provided in Section 6.3(a) (*General Provision of Termination Fee*) above at any time, including but not limited to, following the Company's pursuit of an injunction or specific performance in accordance with Section 8.10 (*Remedies*); *provided*, that while the Company may pursue both an injunction or specific performance in accordance with Section 8.10 (*Remedies*) and the payment of the Termination Fee as provided in Section 6.3(a) (*General Provision of Termination Fee*), under no circumstances shall the Company be permitted or entitled to receive both a grant of specific performance that results in a Closing and any money damages, including all or any portion of the Termination Fee; *provided further*, that if the Company shall obtain an injunction or specific performance in accordance with Section 8.10 (*Remedies*) to consummate the Merger, the Company shall be entitled to recover the reasonable costs and expenses that the Company incurs in connection with its pursuit of such injunction or specific performance in an amount not to exceed $[redacted].

(c) Upon proper payment of the Termination Fee pursuant to Section 6.3(a) (*General Provision of Termination Fee*), (i) Parent, Merger Sub, the Guarantors, the Debt Financing Sources under the Debt Financing or any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, Employees, agents, affiliates or assignees (collectively, the "**Parent Related Parties**") will have no further liability or obligation to the Company, the Securityholders, the Seller Representative or any of their respective Affiliates or any of their respective former, current or future general or limited partners, stockholders, optionholders, members, managers, directors, officers, Employees, agents, affiliates or assignees (collectively, the "**Releasing Parties**") relating to or arising out of

this Agreement, the agreements contemplated hereby, including the Commitment Letters, or the Transactions contemplated hereby or thereby (except that the Parent Related Parties (other than the Debt Financing Sources) shall continue to be bound by the Confidentiality Agreement and Parent and the Guarantors shall continue to be subject to those agreements and provisions which survive a termination of this Agreement as set forth in Section 6.2 (*Effect of Termination*)) and (ii) the Releasing Parties shall not be entitled to commence or pursue any litigation against the Parent Related Parties (other than to recover amounts payable pursuant to the provisions which survive a termination of this Agreement as set forth in Section 6.2 (*Effect of Termination*) or in connection with a violation of the Confidentiality Agreement). Without limiting the foregoing and notwithstanding anything in this Agreement to the contrary, under no circumstances will the maximum aggregate liability of the Parent Related Parties, for monetary damages or other monetary remedies (including payment of the Termination Fee) in connection with this Agreement, the agreements contemplated hereby, including the Commitment Letters, or the Transactions contemplated hereby or thereby be greater than $[redacted] ("**Parent Liability Limitation**"), and in no event shall any Releasing Party seek or obtain, nor shall it permit any of its Representatives or any other Person on its or their behalf to seek or obtain, any monetary recovery or monetary award or any monetary damages of any kind, in the aggregate, in excess of the Parent Liability Limitation.

(d) Each of the parties hereto acknowledges that (i) the agreements contained in this Section 6.3 are an integral part of the transactions contemplated by this Agreement, (ii) the Termination Fee is not a penalty, but is liquidated damages, in a reasonable amount that will compensate the Company in the circumstances in which the Termination Fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision, and (iii) without these agreements, the parties would not enter into this Agreement; accordingly, if Parent fails to timely pay any amount due pursuant to this Section 6.3 and, in order to obtain such payment, the Company commences a suit that results in a judgment against Parent for the payment of any amount set forth in this Section 6.3, Parent shall pay the Company its reasonable costs and expenses in connection with such suit, together with interest on such amount at the prime rate plus 2% as published in The Wall Street Journal in effect on the date such payment was required to be made through the date such payment was actually received, or such lesser rate as is the maximum permitted by applicable Law.

6.4 **Modification or Amendment**. This Agreement may only be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each party hereto; *provided, however*, that after the Requisite Stockholder Approval has been obtained, there shall not be any amendment of this Agreement that by Law requires further approval by the stockholders of the Company without such further approval by such stockholders; *provided, further*, that any waiver, modification or amendment of Sections 6.3(b) (*Termination Fee*), 6.4 (*Modification or Amendment*), 8.3 (*Assignment*), 8.6 (*Third Party Beneficiaries*), 8.10 (*Remedies*), 8.11 (*Governing Law*), 8.12 (*Consent to Jurisdiction*) and 8.13 (*WAIVER OF JURY TRIAL*), 8.16 (*No Recourse*) and any other provision of this Agreement to the extent any waiver,

modification or amendment of such provision would modify the substance of any such Section (or any related defined terms solely as used in such Sections), in each case to the extent any such waiver, modification or amendment would adversely affect the rights of a Debt Financing Source under such Section, shall also be approved by the prior written consent of such Debt Financing Source (or by the party to the Debt Commitment Letter (or any debt document resulting therefrom) affiliated with such Debt Financing Source).

6.5 **Extension; Waiver**. Any party hereto may, to the extent not prohibited by applicable Law, (a) extend the time for the performance of any of the obligations of the other parties hereto, (b) waive any breaches of or inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. Notwithstanding the foregoing, no failure or delay by any party hereto in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder.

ARTICLE VII
SURVIVAL; SPECIFIC INDEMNITIES; WAIVER

7.1 **Survival of Representations, Warranties, Covenants and Agreements**. All representations and warranties and all covenants and obligations set forth in this Agreement shall terminate at the Effective Time (the "**Expiration Date**") and following the Effective Time no party hereto shall have any recourse with respect to any breach of any such representation, warranty, covenant or obligation, except that the covenants and obligations of the Parties in this Agreement all or a portion of which are to be performed at or after the Closing shall survive the Closing in accordance with the terms thereof (and, if no term is specified, shall survive the Closing for the maximum period permitted by applicable Law (including 10 Del. C. 8106(c))). Notwithstanding anything to the contrary in this Agreement, it is the intention of the parties hereto, to the extent permitted by applicable Law, that the Expiration Date supersede any applicable statutes of limitations with respect to the applicable representations and warranties, covenants and obligations. The covenants and agreements of the Securityholders set forth in Sections 7.2(a) [redacted] and 7.2(b) [redacted] below shall survive the Closing until the date that is two (2) years after the Closing Date; *provided*, that to the extent any Parent Indemnified Party delivers a notice of a claim in accordance with Section 7.3(a) (*Claims - Notice*) on or prior to the survival date, such covenants and agreements shall continue and survive beyond such date solely in respect of such claim, until such claim has been resolved in accordance with the provisions hereof.

7.2 **Specific Indemnities**. From and after the Closing, the Securityholders shall, severally and not jointly in accordance with their respective Pro Rata Portions, indemnify and hold harmless Parent, each of its Affiliates (including, after the Effective Time, the Surviving Corporation and its Subsidiaries) and each of their respective former, current or future general or

limited partners, stockholders, members, managers, directors, officers, Employees, agents, affiliates or assignees (each, a "**Parent Indemnified Party**") from and against any and all Taxes, liabilities, losses, damages, payments, deficiencies, awards, assessments, judgments, fees, fines, penalties, interest, costs and expenses (including the reasonable fees and disbursements of outside counsel and all other reasonable amounts paid in investigation, defense or settlement of the foregoing) (collectively, "**Losses**"), which any of the Parent Indemnified Parties shall incur, sustain or suffer as a result of, arising out of, in connection with or relating to:

(a) [redacted]

(b) [redacted]

In furtherance of the foregoing, in addition to recourse for payment directly from any Securityholder, Parent may, in its sole discretion, elect to offset all or any portion of any such indemnifiable Loss due and payable by such Securityholder from and against amounts otherwise payable pursuant to this Agreement by Parent or Merger Sub to or on behalf of such Securityholder (including pursuant to Sections 1.9(f) (*Post-Closing Payments*) and 4.13(j) (*Transaction Tax Deductions*)). Notwithstanding anything to the contrary herein, in no event shall the rights of the Parent Indemnified Parties pursuant to this Section 7.2 be affected by any investigation, inquiry or examination made for or on behalf of any Parent Indemnified Party, or the knowledge of any Parent Indemnified Party's officers, directors, equity holders, employees, agents or representatives or the acceptance by any Parent Indemnified Party of any certificate or opinion hereunder.

7.3 **Claims**.

(a) Any Parent Indemnified Party shall promptly notify the Seller Representative (which shall act on behalf of all Securityholders for purposes of any claims pursuant to Section 7.2 (*Specific Indemnities*)) in writing of any claim with respect to which the Parent Indemnified Party claims indemnification hereunder against the Securityholders pursuant to Section 7.2 (*Specific Indemnities*) (a "**Claim Notice**"). Such claim notice shall include a reasonable description of the nature of such claim, the provisions of this Agreement under which the Parent Indemnified Party is entitled to indemnification, and (to the extent known and determinable) the amount of Losses under such claim. Any delay of a Parent Indemnified Party to give any notice required under this Section 7.3(a) shall not relieve the Securityholders of their

obligations under Section 7.2 (*Specific Indemnities*) except to the extent, if at all, that the Securityholders shall have been materially prejudiced thereby.

(b) The Seller Representative may object to any claim set forth in such Claim Notice on the basis that such claim is not indemnifiable by the Securityholders in accordance with the terms of this Agreement or that the Claim Notice does not comply with the requirements of Section 7.3(a), by delivering written notice to Parent of such objection (an "**Objection Notice**"). Such Objection Notice shall, to the extent practicable, describe the grounds for such objection in reasonable detail. If the Claim Notice relates to a pending Action with a third party, the Objection Notice may specify that the Seller Representative reserves its rights to object to such claim until a determination of liability with respect to such pending Action. However, to the extent that any issues of fact or law have been determined by a court of law or other trier of fact in any Action to which a Claim relates, the Seller Representative agrees that all such determinations shall be deemed to be final and binding upon it, waives any right to object to such determinations, and agrees that such determinations may not be re-litigated as part of the arbitration of any Claim Objection.

(c) Resolution of Objection to Claims. With respect to claims under Section 7.2(b) [redacted]:

(i) If the Seller Representative objects in writing to any claim made in any Claim Notice, the Seller Representative and Parent will attempt in good faith for thirty (30) days after Parent's receipt of such written objection to agree upon the rights of Parent and the Securityholders with respect to each such claim.

(ii) If no such agreement can be reached during the thirty (30)-day period for good faith negotiation, upon the expiration of such thirty (30)-day period, either Parent or the Seller Representative may demand arbitration of the matter unless the amount of the Loss that is at issue is the subject of a pending Action with a third party, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration, and in either such event the determination of whether such disputed claim is properly indemnifiable by the Securityholders pursuant to the terms of this Agreement shall be settled by final and binding arbitration conducted by arbitration under the Delaware Rapid Arbitration Act (the "**DRAA**") and the Delaware Rapid Arbitration Rules promulgated thereunder by the Supreme Court of the State of Delaware ("**Arbitration Rules**"). This provision to arbitrate shall be governed by or construed under the laws of the State of Delaware, without regard to principles of conflict of laws and regardless of whether the laws of the State of Delaware govern the parties' other rights, remedies, liabilities, powers and duties under this Agreement. The seat of the arbitration will be the State of Delaware, although the evidentiary and other proceedings shall take place in Santa Clara, California. All such claims shall be settled by one (1) arbitrator (the "**Neutral Arbitrator**") which shall be selected by the mutual agreement of Parent and the Seller Representative. If Parent and the Seller Representative are unable to agree upon the identity of the Neutral Arbitrator within thirty (30) days of the commencement of the arbitration proceeding, the parties shall file a petition with the Delaware Court of Chancery pursuant to Section 5805 of

the DRAA seeking the appointment of a Neutral Arbitrator. Parent and the Seller Representative expressly consent to, and waive any future objection to, such forum and arbitration rules. In connection with any such arbitration proceeding, the Neutral Arbitrator shall allow reasonable requests for the production of documents relevant to the dispute, permit the taking of depositions of up to five witnesses by each party that are either under the control of the other party or that are a party to the underlying Action that is the basis for the claim, and may compel the attendance at the arbitration hearing of no more than three (3) witnesses within the control of either the Parent or the Seller Representative. The Neutral Arbitrator shall not have the power to compel discovery from any non-parties. The Neutral Arbitrator shall make its determination in accordance with the provisions of this Agreement. The Neutral Arbitrator shall determine the prevailing party and shall determine how all expenses relating to the arbitration shall be paid, including the respective expenses of each party, and the fees of the Neutral Arbitrator based upon the same proportion that the aggregate amount of the disputed items so submitted to the arbiter that is unsuccessfully disputed by each such party (as finally determined by the Neutral Arbitrator) bears to the total disputed amount of such items so submitted. The decision of the Neutral Arbitrator (the "**Final Award**") as to the validity and amount of a claim in the applicable Claim Notice shall be (i) written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the Neutral Arbitrator and (ii) final, conclusive and binding upon the parties to this Agreement, the Parent Indemnified Parties and the Seller Representative, *provided* that, either Parent or the Seller Representative may appeal the Final Award to an appellate arbitrator appointed by the Court of Chancery of the State of Delaware pursuant to Section 5809 of the DRAA, and such appellate arbitrator shall have authority to vacate, modify, correct, or order confirmation of the Final Award, which confirmation shall be deemed final under Section 5810 of the DRAA. Judgment upon any award rendered by the Neutral Arbitrator may be entered in any court having jurisdiction pursuant to Section 8.12 of this Agreement.

(d) If any claim for indemnification pursuant to Section 7.2(b) [redacted] relates to any Action instituted against a Parent Indemnified Party by a third party (a "**Third Party Claim**"), then the Seller Representative shall have the right, subject to the terms and conditions set forth this Section 7.3, to assume control of the defense of such Third Party Claim with counsel reasonably satisfactory to the Parent Indemnified Party (it being acknowledged and agreed that WSGR and Kirkland & Ellis LLP shall in all cases be satisfactory) by providing the Parent Indemnified Party with written notice of its election to assume such defense (which notice shall irrevocably acknowledge the Securityholders' responsibility for such Third Party Claim (without reservation of any rights but subject to the limitations contained in this ARTICLE VII)); *provided*, that the Parent Indemnified Party shall be entitled to have sole control over the defense and (subject to Section 7.3(f) (*Third Party Claims - Settlements*)) settlement of any Third Party Claim (i) seeking any injunction or other equitable relief against the Parent Indemnified Party, (ii) involving any criminal or quasi-criminal action, suit or proceeding, (iii) as to which the Parent Indemnified Party reasonably believes an adverse determination would result in Losses that would exceed the limitations on the right of the Parent Indemnified Party to indemnification contained in Section 7.4 (*Limitations on Indemnification*), (iv) that the Seller Representative has failed or is failing to vigorously

defend, and (v) for which the Seller Representative has not delivered a written notice of its election to assume such defense within the first 30 days after the Parent Indemnified Party gives written notice of such Third Party Claim pursuant to Section 7.3(a) (*Claims - Notice*) (it being understood that for this clause (v) that the Seller Representative may subsequently elect to assume such defense (subject to the limitations on the right to assume set forth in clauses (i) through (iv) above and subject to providing irrevocable acknowledgment of the Securityholders' responsibility for such Third Party Claim (including for defense costs prior to assumption of control))).

(e) The Parent Indemnified Party shall retain the right to employ its own counsel and to participate in the defense of any Third Party Claim, the defense of which has been assumed by the Seller Representative pursuant hereto, but the Parent Indemnified Party shall bear and shall be solely responsible for its own costs and expenses in connection with such participation; *provided*, that if the Seller Representative assumes control of such defense and the Parent Indemnified Party reasonably concludes, based on advice from counsel, that the Securityholders and the Parent Indemnified Party have conflicting interests with respect to such Third Party Claim, the reasonable fees and expenses of counsel to the Parent Indemnified Party solely in connection therewith shall be considered "Losses" for purposes of this Agreement; *provided, however*, that in no event shall the Securityholders be responsible for the fees and expenses of more than one counsel for all Parent Indemnified Parties.

(f) Notwithstanding the foregoing, in the case of Third Party Claims the defense of which has been assumed by the Seller Representative, the Seller Representative shall retain sole authority to negotiate, compromise and settle such Third Party Claim; *provided* that the Seller Representative shall not agree to any settlement of such Third Party Claim that (i) does not include a complete, unconditional and irrevocable release of the Parent Indemnified Parties from all liability with respect thereto and all other claims arising out of the same or similar facts or circumstances, (ii) involves any finding or admission of any fault or (iii) imposes any equitable relief or any monetary obligations not subject to indemnification hereunder on any Parent Indemnified Party, in each case without the prior written consent of the Parent Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed). In the case of any Third Party Claim the defense of which has not been assumed by the Seller Representative, (x) the Seller Representative shall have the right (at its own expense) to employ its own counsel and to consult with counsel to the Parent Indemnified Party and to participate in the defense of the Third Party Claim (including the right to make recommendations which shall be considered in good faith by the Parent Indemnified Party) and the Parent Indemnified Party shall reasonably cooperate with the Seller Representative in connection therewith, and (y) with respect to a claim under Section 7.2(b), in no event will the Parent Indemnified Party settle or compromise any action, consent to the entry of any judgment or forego any appeal with respect to such Third Party Claim without the prior written consent of the Seller Representative (which consent shall not be unreasonably withheld, conditioned or delayed).

(g) Regardless of which party has assumed the defense, all the parties hereto shall use commercially reasonable efforts to cooperate reasonably in the defense or prosecution

of such Third Party Claim. Such cooperation shall include the retention and (upon the Seller Representative's reasonable request and subject to confidentiality and protection of privilege) the provision to the Seller Representative and its counsel and representatives of records and information which are reasonably relevant to such Third Party Claim and making employees available at reasonable time and in reasonable circumstances to discuss any material provided hereunder. The party conducting the defense of any such Third Party Claim will upon the other party's request, provide a reasonable update of the status of the claim, liability or expense and any resulting suit, proceeding or enforcement action, and shall, subject to confidentiality and protection of privilege, furnish such other party with all documents and information that such other party shall reasonably request and shall reasonably consult with such other party prior to acting on major matters, including settlement discussions.

(h) Notwithstanding anything to the contrary contained herein, for all purposes of this ARTICLE VII (including this Section 7.3), the Seller Representative shall have the sole right to make any decisions and determinations on behalf of the Securityholders with respect to any claims for indemnification made against any Securityholder hereunder for all purposes of this Agreement and the Escrow Agreement in accordance with Section 8.5 (*Seller Representative*).

(i) Notwithstanding the foregoing, Section 7.3(c) (*Third Party Claims - Resolution of Objection to Claims*), Section 7.3(d) (*Third Party Claims - Control*), Section 7.3(e) (*Costs and Expenses*), Section 7.3(f) (*Third Party Claims - Settlements*), Section 7.3(g) (*Third Party Claims - Cooperation*) and Section 7.3(h) (*Third Party Claims - Seller Representative*), shall not apply to Section 7.2(a) [redacted].

7.4 **Limitations on Indemnification**. Notwithstanding anything to the contrary contained herein,

(a) the aggregate liability of the Securityholders for all Losses [redacted] under Section 7.2(a) [redacted],

(b) the aggregate liability of the Securityholders for all Losses [redacted] under Section 7.2(a) [redacted],

(c) the aggregate liability of the Securityholders for all Losses under Section 7.2(a) [redacted] shall not exceed an amount equal to (i) [redacted], *plus* (ii) [redacted], *minus* (iii) [redacted], *minus* (iv) [redacted]

[redacted].

(d) the aggregate liability of the Securityholders for all Losses under Section 7.2(b) [redacted] shall not exceed an amount equal to $[redacted],

(e) any Losses recoverable by the Parent Indemnified Parties hereunder shall be reduced in amount by any insurance proceeds under insurance policies of the Company and its Subsidiaries in existence as of the Closing, if any such policies cover such Losses (and renewals, continuations and replacements of such policies), net of any costs of recovery (including increased premiums resulting from such recovery), actually realized by any Parent Indemnified Party, and Parent and the Parent Indemnified Parties shall use commercially reasonable efforts to realize such benefits or proceeds to the extent such recovery is reasonably likely to be available, and

(f) no Losses shall be recoverable from the Securityholders under Section 7.2 (*Specific Indemnities*) that constitute punitive, consequential, incidental, indirect or special damages or lost profits or is calculated via "multiple of profits" or "multiple of cash flow" or other valuation methodology, unless such are payable to an applicable Tax Authority or are payable to a third party pursuant to a Third Party Claim for which the Parent Indemnified Parties were entitled to indemnification pursuant to this Article VII and such claim for indemnification was actually made.

7.5 **Waiver**. Parent and Merger Sub (on behalf of themselves and their Affiliates and Representatives (including, following the Closing, the Surviving Corporation and the Subsidiaries of the Surviving Corporation)) hereby waive, from and after the Closing, any and all rights, claims and causes of action (other than claims of intentional fraud, committed with actual knowledge, with respect to representations and warranties expressly set forth in this Agreement or the certificates contemplated hereby) which Parent or Merger Sub or any of their Affiliates and Representatives may have against the Company or any of its Affiliates or Representatives arising under or based upon any Law or otherwise, in each case, other than (i) claims for indemnification pursuant to this ARTICLE VII, (ii) claims for injunctive relief and/or specific performance in accordance with the terms of Section 8.10 (*Remedies*), (iii) disputes in respect of the Post-Closing Statement (which shall be resolved exclusively in accordance with Section 1.9 (*Calculation of Merger Consideration*)), (iv) claims with respect to covenants or agreements that survive the Closing in accordance with Section 7.1 (*Survival of Representations, Warranties, Covenants and Agreements*) and (v) claims arising out of or relating to the Related Agreements.

ARTICLE VIII
GENERAL PROVISIONS

8.1 **Notices**. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (i) upon receipt if delivered personally, (ii) one Business Day after it is sent by commercial overnight courier service, or (iii) upon transmission if sent via

facsimile or electronic mail (with electronically-generated acknowledgment of complete transmission or confirmation of receipt) to the parties at the following addresses (or at such other address for a party as shall be specified by such party by like notice):

(a) if to Parent or Merger Sub, to:

c/o Madison Dearborn Partners, LLC
Three First National Plaza
70 West Madison, Suite 4600
Chicago, Illinois 60602
Attention: Zaid Alsikafi
Ryan Roberts
Mark Tresnowski
Facsimile No.: (312) 895-1001
Email: ZAlsikafi@MDCP.com
RRoberts@MDCP.com
Legal@MDCP.com

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

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Jeffrey W. Richards, P.C.
Christopher R. Elder
Facsimile No.: (312) 862-2200
Email: jrichards@kirkland.com
christopher.elder@kirkland.com

(b) if to the Company, to:

Intermedia Holdings, Inc.
825 E. Middlefield Road
Mountain View, California 94043
Attention: Jeffrey Eisenberg, General Counsel
Email: jeisenberg@intermedia.net

with copies (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Attention: Mark B. Baudler
Facsimile No.: (650) 493-6811
Email: mbaudler@wsgr.com

and

Wilson Sonsini Goodrich & Rosati, P.C.
One Market Street, Spear Tower, Suite 3300
San Francisco, California 94105
Attention: Todd Cleary
Facsimile No.: (415) 947-2099
Email: tcleary@wsgr.com

(c) if to the Seller Representative, to:

Oak Hill Capital Partners III, LP
65 East 55th Street, 32nd Floor
New York, New York 10022
Attention: John R. Monsky
Email: JMonsky@oakhillcapital.com

8.2 **Interpretation**.

(a) Unless otherwise indicated, all references herein to Articles, Sections or Annexes, shall be deemed to refer to Articles, Sections or Annexes of or to this Agreement, as applicable.

(b) Unless otherwise indicated, the words "include," "includes" and "including," when used herein, shall be deemed in each case to be followed by the words "without limitation."

(c) The words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(d) The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

(e) Unless otherwise indicated, all references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person unless otherwise indicated or the context otherwise requires.

(f) Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

(g) References to "$" and "dollars" are to the currency of the United States of America.

(h) Any dollar or percentage thresholds set forth herein shall not be used as a benchmark for the determination of what is or is not "material" or a "Company Material Adverse Effect" under this Agreement.

(i) When used herein, the word "extent" and the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such word or phrase shall not simply mean "if."

(j) Any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law as from time to time amended, modified or supplemented, including (in the case of statutes) by succession of comparable successor Laws.

(k) The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(l) Unless otherwise indicated, the words "ordinary course of business" shall mean, with respect to a Person, the usual and ordinary conduct of such Person's business, consistent with past custom and practice (including with respect to frequency, quantity and magnitude).

8.3 **Assignment**. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties; *provided, however*, that each of Parent and Merger Sub will have the right to assign all or any portion of its rights and obligations pursuant to this Agreement without the consent of any other Person (i) to any of its Affiliates, (ii) in connection with any disposition or transfer of all or a portion of the Company or any of its Subsidiaries or their respective businesses in any form of transaction or (iii) to any lender to Parent or any of its Subsidiaries (including, after the Effective Time, the Company and its Subsidiaries and including to the Debt Financing Sources pursuant to the terms of the Debt Financing) for purposes of creating a security interest herein or otherwise assigning as collateral; *provided further*, that no assignment shall relieve Parent of any of its obligations pursuant to this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Any purported assignment in violation of this Agreement is void.

8.4 **Entire Agreement**. This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Non-Disclosure Agreement effective July 10, 2015, as amended by the First Amendment to Non-Disclosure Agreement effective June 17, 2016, between Madison Dearborn Partners, LLC and the Company (as may be amended from time to time, the "**Confidentiality Agreement**"), the Guaranty, the Disclosure Schedule and the Annexes hereto and thereto, constitute the entire

agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Notwithstanding anything herein or therein to the contrary, the Confidentiality Agreement shall terminate at the earlier of (i) the Effective Time and (ii) the date of its expiration in accordance with its terms.

8.5 **Seller Representative**.

(a) The Stockholders, by virtue of the approval and adoption of this Agreement and the delivery of the Requisite Stockholder Approval, and the Optionholders, by virtue of the cancellation of Company Options in exchange for the applicable Option Consideration, irrevocably constitute and appoint the Seller Representative (and by execution and delivery of this Agreement, the Seller Representative hereby accepts such appointment) as their agent and attorney-in-fact for and on behalf of each Securityholder, with full power of substitution, to act in the name, place and stead of each Securityholder, with respect to any matter relating to or under this Agreement and the Escrow Agreement, including (i) taking such actions and making such decisions as may be necessary or appropriate in connection with the determination of the Final Merger Consideration; (ii) taking such actions and making such decisions as may be necessary or appropriate in connection with any claim asserted by Parent pursuant to ARTICLE VII (*Survival; Specific Indemnities; Waiver*), including reviewing, disputing, agreeing to, negotiating, entering into settlements or compromises of any such claim; (iii) enforcing this Agreement and the Escrow Agreement for and on behalf of the Securityholders; (iv) giving and receiving all notices required to be given under this Agreement and the Escrow Agreement; (v) taking any and all actions and making any and all decisions required or permitted to be taken or made by the Seller Representative under this Agreement and the Escrow Agreement; and (vi) taking any and all actions necessary or appropriate in furtherance of or for the accomplishment of the foregoing. The power of attorney granted in this Section 8.5 by each Securityholder to the Seller Representative is coupled with an interest and is irrevocable, may be delegated by the Seller Representative and shall survive the death or incapacity of any Securityholder. No bond shall be required of the Seller Representative. The Seller Representative shall be entitled to engage outside legal counsel, accountants, consultants, experts or other advisors as the Seller Representative deems necessary or appropriate in connection with performing its duties or exercising its rights under this Agreement and the Escrow Agreement. Each Securityholder shall be deemed to have agreed to receive correspondence from the Seller Representative, including in electronic form.

(b) All decisions, consents, instructions and actions by the Seller Representative made or taken in accordance with this Agreement or the Escrow Agreement shall be final and binding on all of the Securityholders, and no Securityholder shall have any cause of action against the Seller Representative or any of the Parent Related Parties (including, after the Effective Time, the Company or any of its Subsidiaries) for any decision made, consent or instruction given, or action taken by the Seller Representative under this Agreement or the Escrow Agreement, except for any such decision, consent, instruction or action that constitutes fraud, gross negligence, bad faith or willful misconduct by or on behalf of the Seller

Representative. Parent shall be entitled to rely conclusively on any decisions, consents, instructions and actions by the Seller Representative made or taken in connection with this Agreement or the Escrow Agreement in writing, and no party hereto or any Securityholder shall have any cause of action against Parent or any of the Parent Related Parties (including, after the Effective Time, the Company or any of its Subsidiaries) for any action taken by Parent in reliance upon any such decision, consent, instruction or action.

(c) The Seller Representative, in its capacity as such, shall not have any liability to any of the parties hereto or to the Securityholders for any act done or omitted hereunder as Seller Representative while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of outside legal counsel shall be conclusive evidence of such good faith. The Securityholders shall severally but not jointly, based on their respective Pro Rata Portions, indemnify and hold harmless the Seller Representative from and against any loss, liability or expense incurred by the Seller Representative arising out of or in connection with the acceptance, performance or administration of its duties under this Agreement and the Escrow Agreement, except for any such loss, liability or expense based upon or arising out of any fraud, gross negligence, bad faith or willful misconduct by or on behalf of the Seller Representative. The Seller Representative shall be entitled to recover any such losses, liabilities or expenses which are indemnifiable hereunder (i) first by recourse to any amounts available in the Seller Representative Fund and (ii) second by recourse directly to the Securityholders, based on their respective Pro Rata Portions. If any funds remain in the Seller Representative Fund after completion of the Seller Representative's responsibilities, the Seller Representative, as soon as practicable after completion of the Seller Representative's responsibilities, will (A) deposit or cause to be deposited in the Payment Fund held by the Paying Agent, by wire transfer of immediately available funds, an amount in cash equal to the portion of the amounts remaining in the Seller Representative Fund to which Stockholders are entitled pursuant to Section 1.6(b) (*Effect on Company Capital Stock*) and (B) deposit or cause to be deposited with the Surviving Corporation, by wire transfer of immediately available funds, an amount in cash equal to the portion of the amounts remaining in the Seller Representative Fund to which the Optionholders are entitled pursuant to Section 1.6(c) (*Effect on Company Options*).

(d) From and after the Effective Time, Parent shall cause the Surviving Corporation to provide the Seller Representative with reasonable access (including electronic access, to the extent available) to the books, records and other documents and materials of the Surviving Corporation and the reasonable assistance of the officers and Employees of Parent and the Surviving Corporation as reasonably requested by the Seller Representative and, in each case, as necessary for performing its duties and exercising its rights under this Agreement and the Escrow Agreement (but not, for the avoidance of doubt, in respect of any claim or dispute between any Parent Indemnified Party, on the one hand, and any Securityholder or the Seller Representative, on the other hand). From and after the Effective Time, the Seller Representative may retain copies, reproductions, summaries, analyses or extracts (whether in hard-copy form or on intangible media, such as electronic mail or computer files) of the contents of any virtual data room maintained by the Company in connection with the Transactions, the Company's corporate

books and records and all of the Company's historical written communications (including electronic mail) prior to the Effective Time, in each case to be used solely for record retention purposes or in connection with performing its duties or exercising its rights under this Agreement and the Escrow Agreement.

(e) The identity of the Seller Representative and the terms of the agency may be changed, and a successor Seller Representative may be appointed, from time to time (including in the event of the resignation, death, disability or other incapacity of the Seller Representative) by consent of a majority-in-interest (based on the number of Fully Diluted Shares held by them, calculated as of such date) of the Securityholders. Each successor Seller Representative shall have all of the power, authority, rights and privileges conferred by this Agreement upon the original Seller Representative, and the term "Seller Representative" as used herein shall be deemed to include any such successor Seller Representatives.

(f) The provisions of this Section 8.5 shall be binding upon the executors, heirs, legal representatives, personal representatives, successor trustees and successors of each Securityholder, and any references in this Agreement to a Securityholder or the Securityholders shall mean and include the successors to the rights of the Securityholders hereunder, whether pursuant to testamentary disposition, the Laws of descent and distribution or otherwise.

8.6 **Third Party Beneficiaries**. This Agreement is not intended to, and shall not, confer upon any Person other than the Parties any rights or remedies hereunder, except for (a) the provisions of Section 4.11 (*Directors' and Officers' Indemnification*) (which shall be for the benefit of the D&O Indemnitees, and the D&O Indemnitees will have the rights provided for therein), (b) from and after the Effective Time, if Parent shall not have made payments in accordance with Section 1.2(b) (*Closing-Party Deliveries*) or 1.9(f)(ii) (*Post-Closing Payments - Positive Adjustment*) (as applicable), the rights of Securityholders to receive the consideration pursuant to the Merger, as set forth in ARTICLE I (*The Merger*), (c) the provisions of ARTICLE VII (*Survival; Specific Indemnities; Waiver*) (which shall be for the benefit of the Parent Indemnified Parties, and the Parent Indemnified Parties shall be entitled to rely on and enforce directly) and (d) this ARTICLE VIII in respect of the Sections set forth under the foregoing clauses (a), (b) and (c) and (d) the Debt Financing Sources and their respective Non-Recourse Parties shall be third party beneficiaries of Sections 6.3(b) (*Termination Fee - Injunction or Specific Performance*), 6.4 (*Modification or Amendment*), 8.3 (*Assignment*), 8.6 (*Third Party Beneficiaries*), 8.10 (*Remedies*), 8.11 (*Governing Law*), 8.12 (*Consent to Jurisdiction*) 8.13 (*WAIVER OF JURY TRIAL*) and 8.16 (*No Recourse*). The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with Section 6.5 (*Extension; Waiver*). The representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Accordingly, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

8.7 **Expenses**. Except as may otherwise be expressly set forth herein, whether or not the Merger is consummated, all fees and expenses incurred in connection with the authorization, preparation, negotiation, execution and performance of this Agreement and the consummation of the Transactions shall be the obligation of the respective party incurring such fees and expenses.

8.8 **Obligations of Merger Sub**. Subject to the terms and conditions set forth in this Agreement, Parent shall take all action reasonably necessary to cause Merger Sub and the Surviving Corporation to perform their respective obligations under this Agreement and to consummate the Transactions upon the terms and subject to the conditions set forth in this Agreement.

8.9 **Severability**. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

8.10 **Remedies**.

(a) Except as otherwise provided herein (including in Section 6.3 (*Termination Fee*)), any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

(b) The parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including, subject to Section 8.10(c) (*Specific Performance in connection with Financing*) below, failing to take such actions as are required of them hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. Accordingly, the parties acknowledge and agree that prior to a valid termination of this Agreement pursuant to ARTICLE VI (*Termination, Amendment and Waiver*), subject to Section 6.3 (*Termination Fee*) and Section 8.10(c) (*Specific Performance in connection with Financing*), that the parties shall be entitled to an injunction or specific performance to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law. Subject to Section 6.3 (*Termination Fee*) and Section 8.10(c) (*Specific Performance in connection with Financing*), each of the parties agrees that it will not oppose the granting of an injunction or specific performance on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to

enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

(c) Notwithstanding the foregoing Section 8.10(b) (*Specific Performance*), the parties hereto acknowledge and hereby agree that the Company shall be entitled to an injunction or specific performance in connection with enforcing Parent's obligation to cause the Equity Financing to be funded (and to exercise its third party beneficiary rights under the Equity Commitment Letters, subject to the terms thereof) and to consummate the Merger only in the event that, prior to a valid termination of this Agreement pursuant to ARTICLE VI (*Termination, Amendment and Waiver*), each of the following conditions is satisfied: (A) the conditions set forth in Section 5.1 (*Conditions to the Obligations of Each Party to Effect the Merger*) and Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*) have been satisfied (other than those conditions that by their terms are to be satisfied at the Closing, but subject to each such condition being satisfied at the Closing) or waived, Parent and Merger Sub are required to complete the Closing and consummate the Merger pursuant to Section 1.2(a) (*Closing*) and Parent and Merger Sub fail to consummate the Merger by the date the Closing is required to have occurred pursuant to Section 1.2(a) (*Closing*), (B) the Debt Financing has been funded in accordance with the terms thereof or the Lenders have confirmed in writing that it will be funded in accordance with the terms thereof at the Closing if the Equity Financing is funded at the Closing and (C) the Company has irrevocably certified to Parent and Merger Sub in writing that all conditions set forth in Section 5.3 (*Additional Conditions to the Obligations of the Company*) have been satisfied or that it is waiving any unsatisfied conditions in Section 5.3 (*Additional Conditions to the Obligations of the Company*) and that if specific performance is granted and the Equity Financing and the Debt Financing are funded then the Closing will occur. Subject to the terms of Section 6.3 (*Termination Fee*), no election to pursue an injunction or specific performance shall restrict, impair or otherwise limit the Company from, in the alternative, seeking to terminate the Agreement and collect the Termination Fee pursuant to Section 6.3 (*Termination Fee*).

8.11 **Governing Law**. THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF TO THE EXTENT THAT SUCH PRINCIPLES WOULD DIRECT A MATTER TO ANOTHER JURISDICTION. Notwithstanding anything to the contrary contained herein, any and all claims concerning the Debt Financing (including any claim, controversy or dispute against or involving any Debt Financing Source, including their respective successors and permitted assigns) shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York, without giving effect to any choice of law or conflicts of laws rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of New York; *provided, however*, that the Laws of the State of Delaware shall govern in determining (a) the interpretation of a "Company Material Adverse Effect" and whether a "Company Material Adverse Effect" has occurred, (b) the accuracy of any Specified Purchase Agreement Representation (as defined in the Debt

Commitment Letter) and whether as a result of any inaccuracy thereof Merger Sub has the right to terminate its obligations, or to refuse to consummate the transactions, under this Agreement and (c) whether the transactions under this Agreement have been consummated in accordance with the terms hereof (in each case, without regard to the principles of conflicts of laws thereof, to the extent that the same are not mandatorily applicable by statute and would require or permit the application of the Law of another jurisdiction).

8.12 **Consent to Jurisdiction**. Each of the parties hereto (i) irrevocably consents to the service of the summons and complaint and any other process in any action or proceeding relating to the transactions contemplated by this Agreement, for and on behalf of itself or any of its properties or assets, in accordance with Section 8.1 (*Notices*), and nothing in this Section 8.12 shall affect the right of any party to serve legal process in any other manner permitted by applicable Law; (ii) irrevocably submits itself and its properties and assets to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, if (and only if) the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, the Superior Court of the State of Delaware or any federal court sitting in the State of Delaware) for the purpose of any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of the parties hereto in the negotiation, administration, performance and enforcement hereof; (iii) consents to submit itself to the personal jurisdiction of the Court of Chancery of the State of Delaware (or, if (and only if) the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, the Superior Court of the State of Delaware or any federal court sitting in the State of Delaware) for the purpose of any such action, proceeding or counterclaim; (iv) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (v) waives any objection that it may now or hereafter have to the venue of any such action, proceeding or counterclaim in any such court or that such action, proceeding or counterclaim was brought in an inconvenient court and agrees not to plead or claim the same; and (vi) agrees that it will not bring any action, proceeding or counterclaim relating to this Agreement or the Transactions in any court other than the aforesaid courts. Each of Parent, Merger Sub, Seller Representative and the Company agrees that a final judgment in any action or proceeding in such courts as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law. Notwithstanding the foregoing, none of the parties hereto will bring any legal action, suit, proceeding or claim (whether at law, in contract, in tort or otherwise) against any Debt Financing Source in connection with this Agreement or any of the transactions contemplated by this Agreement, including but not limited to (i) any dispute arising out of or relating to the Debt Financing or the performance thereof or the transactions contemplated thereby, anywhere other than in (A) any New York State court sitting in the Borough of Manhattan or (B) the United States District Court for the Southern District of New York (and any appellate courts thereof) and (ii) each party hereby waives any objection that it may now or hereafter have to the venue of any such action, proceeding or counterclaim in any such court or that such action, proceeding or counterclaim was brought in an inconvenient court and agrees not to plead or claim the same. The parties hereby consent to and grant any such court exclusive jurisdiction over the person of such parties and, to the extent permitted by Law, over the subject matter of such dispute and

agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.1 (*Notices*) or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

8.13 **WAIVER OF JURY TRIAL**. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE DEBT COMMITMENT LETTER OR THE ACTIONS OF THE PARTIES HERETO OR THERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF OR THEREOF (INCLUDING ANY ACTION, PROCEEDING OR COUNTERCLAIM INVOLVING ANY DEBT FINANCING SOURCE AND THEIR RESPECTIVE NON-RECOURSE PARTIES OR ANY DEBT FINANCING SOURCE).

8.14 **Waiver of Conflicts Regarding Representation**. WSGR and Pillsbury Winthrop Shaw Pittman LLP ("**Pillsbury**") have acted as counsel and EY (which, for the purposes of this Section 8.14 shall refer only to the team of EY professionals who have provided advice to the Securityholders and the Company prior to the date hereof, and not to any EY professionals who have been or may be retained by Parent, Merger Sub or their Affiliates (including, after the Closing, the Surviving Corporation)) has provided tax and accounting advice for certain of the Securityholders and the Company (collectively, the "**Company Parties**") in connection with this Agreement, the Related Agreements and the Transactions (the "**Acquisition Engagement**") and, in that connection, not as counsel or advisor of tax and accounting related matters for any other Person, including, without limitation, Parent or any of its Affiliates (including the Surviving Corporation). Only the Company Parties shall be considered clients of WSGR, Pillsbury or EY in the Acquisition Engagement. WSGR, Pillsbury and EY shall be permitted, without the need for any future waiver or consent, to represent any of the Securityholders after the Closing in connection with any matter related to the matters contemplated by this Agreement or the Related Agreements, any other agreements referenced herein or therein or any disagreement or dispute relating thereto and may in connection therewith represent the agents or Affiliates of the Securityholders in any of the foregoing cases including, without limitation, in any dispute, litigation or other adversary proceeding against, with or involving Parent, the Surviving Corporation or any of their agents or Affiliates. To the extent that communications between a Company Party, on the one hand, and WSGR, Pillsbury or EY, on the other hand, relate to the Acquisition Engagement, such communication shall be deemed to be attorney-client confidences or accountant-client privileges, respectively, that belong solely to the Securityholders, and not the Company or Surviving Corporation. Neither Parent nor any of its Affiliates, including the Surviving Corporation, shall have access to (and Parent hereby waives, on behalf of each, any right of access it may otherwise have with respect to) any such communications or the files or work product of WSGR, Pillsbury or EY, to the extent that they relate to the Acquisition Engagement, whether or not the Closing occurs. Without limiting the generality of the foregoing, Parent acknowledges and agrees, for itself and on behalf of its Affiliates, including the Surviving Corporation, upon and after the Closing: (i) the

Securityholders and WSGR, Pillsbury or EY shall be the sole holders of the attorney-client privilege or accountant-client privilege, respectively, with respect to the Acquisition Engagement, and neither Parent nor any of its Affiliates, including the Surviving Corporation, shall be a holder thereof; (ii) to the extent that files or work product of WSGR, Pillsbury or EY in respect of the Acquisition Engagement constitute property of the client, only the Securityholders shall hold such property rights and have the right to waive or modify such property rights; and (iii) WSGR, Pillsbury or EY shall have no duty whatsoever to reveal or disclose any such attorney-client or accountant-client communications, files or work product to Parent or any of its Affiliates, including the Surviving Corporation, by reason of any attorney-client relationship or accountant-client relationship between WSGR, Pillsbury or EY, respectively, and the Company or otherwise; *provided* that, to the extent any communication is both related and unrelated to the Acquisition Engagement, WSGR, Pillsbury or EY shall provide appropriately redacted versions of such communications, files or work product to Parent or its Affiliates, including the Surviving Corporation. Notwithstanding and without limiting the foregoing, in the event that a dispute arises between any of Parent or the Surviving Corporation or their Affiliates, on one hand, and any of the Securityholders, on the other hand, concerning the matters contemplated in this Agreement, Parent, for itself and on behalf of its Affiliates and the Surviving Corporation and its Affiliates, agrees that Parent, the Surviving Corporation and their Affiliates shall not offer into evidence or otherwise attempt to use or assert the foregoing attorney-client communications or accountant-client communications, files or work product against the Securityholders. Notwithstanding anything to the contrary contained herein, (i) the foregoing waivers and acknowledgements of retention shall not extend to any communication not involving the Acquisition Engagement, or to communications with any Person other than WSGR, Pillsbury or EY and (ii) in the event that after the Closing a dispute arises between Parent, the Surviving Corporation or any of their respective Affiliates and a Person other than a Securityholder or any of its Affiliates, then Parent, the Surviving Corporation or any of their respective Affiliates, as applicable, may assert the attorney-client privilege to prevent disclosure of confidential communications to or from WSGR, Pillsbury, EY or any of the Securityholders and their respective Affiliates; *provided*, further, that none of Parent, the Surviving Corporation or any of their respective Affiliates may waive such privilege without the prior written consent of the Seller Representative.

8.15 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when all such counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or by e-mail of a .pdf attachment shall be effective as delivery of a manually executed counterpart of this Agreement.

8.16 **No Recourse**. Notwithstanding anything in this Agreement to the contrary, the Securityholders and the Seller Representative and, only with respect to claims made prior to the Effective Time, the Company (on behalf of themselves and their respective direct or indirect equity holders, controlling persons, stockholders, Affiliates, general or limited partners,

assignees and Representatives) hereby irrevocably waive any rights or claims against any Debt Financing Source or any of their respective Affiliates and any of their respective former, current and future direct or indirect equity holders, controlling persons, stockholders, Affiliates, general or limited partners, assignees or Representatives (collectively, including the Debt Financing Sources, the "**Debt Financing Source Related Parties**") in connection with this Agreement, the Debt Financing, the Debt Commitment Letter, or in respect of any other document or any of the transactions contemplated hereby or thereby or any theory of law or equity (whether in tort, contract or otherwise) or in respect of any oral or written representations made or alleged to be made in connection herewith or therewith and the Securityholders and the Seller Representative and, only with respect to claims made prior to the Effective Time, the Company (on behalf of themselves and their respective direct or indirect equity holders, controlling persons, stockholders, Affiliates, general or limited partners, assignees or Representatives) agree not to commence (and if commenced, agrees to dismiss or otherwise terminate) any dispute, suit, claim, litigation, investigation, proceeding or other action against any Debt Financing Source Related Party in connection with this Agreement, the Debt Financing, the Debt Commitment Letter or in respect of any other document or any of the transactions contemplated hereby or thereby. In furtherance and not in limitation of the foregoing waiver, it is agreed that no Debt Financing Source Related Party shall have any liability for any claims, losses, settlements, damages, costs, expenses, fines or penalties to the Securityholders and the Seller Representative and, only with respect to claims made prior to the Effective Time, the Company (on behalf of themselves and each of their direct or indirect equity holders, controlling persons, stockholders, Affiliates, general or limited partners, assignees and Representatives) in connection with this Agreement or the transactions contemplated hereby. Furthermore, without limiting any of the foregoing, no Debt Financing Source shall be responsible for any indirect, incidental, special, punitive, exemplary or consequential damages in connection with this Agreement, the Debt Financing, the Debt Commitment Letter and the transactions contemplated hereby or thereby. Notwithstanding the foregoing, nothing in this Section 8.16 shall in any way limit or modify the rights and obligations of Parent, Merger Sub, the Debt Financing Sources, the Debt Financing Source Related Parties or their respective Affiliates under the Debt Commitment Letter or the definitive agreements with respect thereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and Seller Representative have caused this Agreement to be signed, all as of the date first written above.

IVY PARENT HOLDINGS, LLC

By: _____
Name: Zaid F. Alsikafi
Title: Managing Director

IVY MERGER SUB, INC.

By: _____
Name: Zaid F. Alsikafi
Title: Managing Director

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and Seller Representative have caused this Agreement to be signed, all as of the date first written above.

INTERMEDIA HOLDINGS, INC.

By:
Name: Michael Gold
Title: Chief Executive Officer

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and Seller Representative have caused this Agreement to be signed, all as of the date first written above.

OAK HILL CAPITAL PARTNERS III, L.P.

By: OHCP GenPar III, L.P.
Its: General Partner

By: OHCP MGP Partners III, L.P.
Its: General Partner

By: OHCP MGP III, Ltd.
Its: General Partner

By: _____
Name: Caitlin Melchior
Title: Assistant Secretary

ANNEX A
DEFINED TERMS

For all purposes of this Agreement, the following terms shall have the following respective meanings:

"**2011 Plan**" shall mean the Company's 2011 Equity Incentive Plan.

"**280G Stockholder Vote**" shall have the meaning set forth in Section 4.3(c)

"**Accounting Firm**" shall have the meaning set forth in Section 1.9(c).

"**Accounting Principles**" shall have the meaning set forth in Section 1.9(c).

"**Acquisition Engagement**" shall have the meaning set forth in Section 8.14.

"**Acquisition Proposal**" shall mean any offer or proposal (other than an offer or proposal by Parent or any of its Affiliates) to engage in an any transaction or series of related transactions (other than the transactions contemplated by this Agreement) involving: (i) any direct or indirect purchase or other acquisition by any Person or "group" (as defined in or under Section 13(d) of the Exchange Act), whether from the Company and/or any other Person(s), of all or a portion of the Company Capital Stock (other than pursuant to the grant or exercise of equity awards to Employees or consultants in the ordinary course of business); (ii) any direct or indirect purchase or other acquisition by any Person or "group" (as defined in or under Section 13(d) of the Exchange Act) of more than five percent (5%) of the consolidated assets of the Company and its Subsidiaries taken as a whole (other than the sale or license of products in the ordinary course of business); or (iii) any merger, consolidation, business combination, recapitalization or other similar transaction involving the Company; or (iv) a liquidation, dissolution or other winding up of the Company.

"**Action**" shall mean any lawsuit, litigation, claim, charge, investigation, audit, arbitration or other formal legal proceeding brought by or before any Governmental Authority.

"**Adjustment Escrow Amount**" shall have the meaning set forth in Section 1.2(b).

"**Adjustment Escrow Fund**" shall have the meaning set forth in Section 1.2(b).

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly through one or more intermediaries controlling, controlled by or under common control with such other Person. For purposes of the immediately preceding sentence, the term "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"**Agreement**" shall have the meaning set forth in the Preamble.

"**Aggregate Closing Option Proceeds**" shall mean the aggregate amount of Option Closing Consideration payable to all Optionholders pursuant to Section 1.6(c).

"**Aggregate Option Proceeds**" shall mean the aggregate amount of Option Consideration payable to all Optionholders pursuant to Section 1.6(c).

"**Aggregate Closing Stockholder Proceeds**" shall mean the aggregate amount of all Per Share Common Closing Merger Consideration payable to all Stockholders pursuant to Section 1.6(b).

"**Aggregate Securityholder Note Amount**" shall mean the sum of all Securityholder Note Amounts as of immediately prior to the Effective Time.

"**Aggregate Stockholder Proceeds**" shall mean the aggregate amount of all Per Share Common Merger Consideration payable to all Stockholders pursuant to Section 1.6(b).

"**Anti-Corruption Laws**" shall have the meaning set forth in Section 2.12.

"**Antitrust Laws**" shall mean the HSR Act, the Sherman Act, the Clayton Act, the Federal Trade Commission Act and all other applicable federal, state, local or foreign, multinational or supranational antitrust, competition, premerger notification or trade regulation Laws, regulations or Orders.

"**Antitrust Required Action**" shall have the meaning set forth in Section 4.8(a).

"**Arbitration Rules**" shall have the meaning set forth in Section 7.3(c)(ii).

"**Audited Financial Statements**" shall have the meaning set forth in Section 2.7.

"**Business Day**" shall mean any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in California are permitted or required by Law, executive order or governmental decree to remain closed.

"**Certificate of Merger**" shall have the meaning set forth in Section 1.2(b).

"**claim**" shall have the meaning set forth in Section 3.11.

"**Claim Notice**" shall have the meaning set forth in Section 7.3(a).

"**Closing**" shall have the meaning set forth in Section 1.2(a).

"**Closing Cash**" shall mean the sum of the cash, cash equivalents and marketable securities of the Company and its Subsidiaries as of 11:59 p.m. pacific time on the day immediately prior to the Closing Date (but reduced by any amounts utilized by the Company

pursuant to Section 4.15 (*Use of Cash*) after such time and on or prior to the Effective Time), whether or not kept "on site" or held in deposit, checking, brokerage or other accounts of or in any safety deposit box or other physical storage device provided by a financial institution or otherwise, and any uncleared inbound checks, drafts or wire transfers received or deposited or available for deposit that are not yet credited to the account of the Company and its Subsidiaries; *provided*, that "Closing Cash" shall (i) be reduced by the amount of any uncleared outbound checks, drafts or wire transfers or bank overdrafts, (ii) exclude all restricted cash (including cash in reserve accounts or cash escrow accounts, custodial cash and cash otherwise subject to any legal or contractual restriction on the ability to transfer or use such cash for any lawful purpose), (iii) be reduced by the amount of any cash generated upon the settlement of any of the hedging arrangements set forth in Section A-1 of the Disclosure Schedule, and (iv) be reduced by any amount used or distributed in violation of Section 4.1(c).

"**Closing Date**" shall have the meaning set forth in Section 1.2(a).

"**Closing Indebtedness**" shall mean the outstanding Indebtedness of the Company and its Subsidiaries as of immediately prior to the Effective Time (it being understood that Closing Indebtedness shall not include any amounts satisfied by the Company pursuant to Section 4.15 (*Use of Cash*) on or prior to the Effective Time).

"**Closing Net Working Capital**" shall mean (i) the sum of the Company's and its Subsidiaries' combined current assets, minus (ii) the sum of the Company's and its Subsidiaries' combined current liabilities; *provided*, that (x) notwithstanding clause (i) above, the combined current assets of the Company and its Subsidiaries shall not include Closing Cash, deferred Tax assets, prepaid federal Income Taxes, prepaid state Income Taxes, receivables or other assets arising from employee loans (including any Securityholder Notes) or assets in respect of hedging or swap arrangements and (y) notwithstanding clause (ii) above, the combined current liabilities of the Company and its Subsidiaries shall not include deferred Tax liabilities, the social security or unemployment Tax portions of any Transaction Payroll Taxes, the Pre-Closing Sales and Use Tax Reserve, the amount of the Company's reserve in respect of FASB Interpretation No. 48, liabilities in respect of hedging or swap arrangements, accrued federal Income Taxes, accrued state Income Taxes, liabilities included in Closing Indebtedness or liabilities included in Unpaid Transaction Expenses (to the extent resulting in a dollar for dollar reduction of Merger Consideration), or deferred rent, and, for the avoidance of doubt, shall include any reserve or accrued liabilities in respect of the improper use of net operating losses in Pre-Closing Taxable Periods, in the case of each of clauses (i) and (ii), as of 11:59 p.m. pacific time on the day immediately prior to the Closing Date, subject to and calculated in accordance with the Accounting Principles. For the avoidance of doubt, intercompany payables and receivables between the Company and its Subsidiaries or among the Company's Subsidiaries will not be included in the calculation of Closing Net Working Capital. As an illustration of the methodology set forth in the preceding sentences, Closing Net Working Capital as of July 31, 2016 was approximately [redacted] after rounding, and was calculated as set forth in the sample calculation of Closing Net Working Capital set forth on Annex J.

"**Closing Tax Refund Payments**" shall have the meaning set forth in Section 4.13(j).

"**COBRA**" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and as codified in Section 4980B of the Code and Section 601 et. seq. of ERISA and any similar state Law.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Collective Bargaining Agreement**" shall have the meaning set forth in Section 2.21(a).

"**Commitment Letters**" shall have the meaning set forth in Section 3.9(a).

"**Company**" shall have the meaning set forth in the Preamble.

"**Company Capital Stock**" shall mean the Company Common Stock.

"**Company Charter Documents**" shall have the meaning set forth in Section 2.1.

"**Company Common Stock**" shall mean the common stock, $0.0001 par value per share, of the Company.

"**Company Employee Plan**" shall mean any scheme, plan, program, policy, practice, Contract or other arrangement (whether written or oral) providing for deferred compensation, profit sharing, bonus, employment, retention, change in control payments, severance, termination pay, time in lieu of pay, performance awards, stock or stock-related awards, fringe benefits, group or individual health, dental, medical, retiree medical, life insurance, short or long term disability insurance, accidental death and dismemberment insurance, survivor benefits, welfare, pension or other employee benefits or remuneration of any kind, whether formal or informal, funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, which is maintained, contributed to, or required to be contributed to, by the Company or any of its Subsidiaries or ERISA Affiliates for the benefit of any Employee, or pursuant to which the Company or any of its Subsidiaries has or may have any liability, contingent or otherwise.

"**Company Fundamental Representations**" means the representations and warranties of the Company set forth in Section 2.1 (*Organization*), Section 2.2 (*Company Capital Structure*), Section 2.3 (*Subsidiaries*), Section 2.4 (*Authority*) and Section 2.23 (*Brokers' Fees*).

"**Company Intellectual Property**" shall mean any and all Intellectual Property Rights that are owned or purported to be owned by the Company or any of its Subsidiaries.

"**Company Licensed Intellectual Property**" shall mean all Intellectual Property Rights owned by a third Person that is licensed to the Company or any of its Subsidiaries.

"**Company Material Adverse Effect**" shall mean any change, effect, event, circumstance or development (each a "**Change**", and collectively, "**Changes**"), individually or in

the aggregate, and taken together with all other Changes, that has had or would reasonably be expected to have a material adverse effect on (x) the assets, liabilities, business, operations, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole, or (y) the ability of the Company and its Subsidiaries to timely consummate the Transactions (including the Merger); *provided, however*, that with respect to the foregoing clause (x), no Change (by itself or when aggregated or taken together with any and all other Changes) to the extent directly or indirectly resulting from, attributable to or arising out of any of the following shall be deemed to be or constitute a "Company Material Adverse Effect," and no Change (by itself or when aggregated or taken together with any and all other such Changes) to the extent directly or indirectly resulting from, attributable to or arising out of any of the following shall be taken into account when determining whether a "Company Material Adverse Effect" has occurred or may, would or could occur:

(i) general economic conditions (or changes in such conditions) in the United States or any other country or region in the world, or conditions in the global economy generally;

(ii) conditions (or changes in such conditions) in the securities markets, capital markets, credit markets, currency markets or other financial markets in the United States or any other country or region in the world, including (A) changes in interest rates in the United States or any other country or region in the world and changes in exchange rates for the currencies of any countries and (B) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world;

(iii) conditions (or changes in such conditions) generally affecting the industries in which the Company and its Subsidiaries conduct business;

(iv) political conditions (or changes in such conditions) in the United States or any other country or region in the world or acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism) in the United States or any other country or region in the world;

(v) earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions and other force majeure events in the United States or any other country or region in the world;

(vi) changes in Law or other legal or regulatory conditions (or the interpretation thereof) or changes in GAAP or other accounting standards (or the interpretation thereof), in each case, after the date of this Agreement;

(vii) the announcement of this Agreement or the pendency or consummation of the Transactions, including the identity of Parent or the Guarantors;

(viii) any actions taken or failure to take action, in each case, by Parent or any of its controlled Affiliates in violation of this Agreement, or to which Parent has expressly approved, consented to or requested, in each case, in writing; or compliance with the terms of, or the taking of any action expressly required by, this Agreement; or the failure to take any action prohibited by this Agreement; and

(ix) any failure by the Company to meet any internal budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations, in and of itself (but not, in each case, the underlying cause of such changes or failures, unless such changes or failures would otherwise be excepted from this definition).

except in the case of the foregoing clauses (i), (ii), (iii), (iv), (v) and (vi), such matters shall not be excluded from consideration for purposes of this definition to the extent that any such matter has had, or would reasonably be expected to have, a disproportionate impact on the Company and its Subsidiaries, taken as a whole, relative to other businesses in the industries in which the Company and its Subsidiaries operate, but only to the extent of such disproportionality.

"**Company Material Contracts**" shall have the meaning set forth in Section 2.16(b).

"**Company Option**" shall mean each option to purchase Company Capital Stock pursuant to the 2011 Plan.

"**Company Parties**" shall have the meaning set forth in Section 8.14.

"**Company Permits**" shall have the meaning set forth in Section 2.14.

"**Company Products**" shall mean all software and other technology-enabled products and services, together with any and all supplements, modifications, updates, corrections and enhancements thereto, that are currently marketed, sold or licensed by the Company or any of its Subsidiaries.

"**Company Registered Intellectual Property**" shall mean all of the Registered Intellectual Property owned by, under obligation of assignment to, or filed in the name of the Company or any of its Subsidiaries.

"**Company Stock Certificates**" shall have the meaning set forth in Section 1.6(b)(ii).

"**Company Systems**" shall have the meaning set forth in Section 2.17(j).

"**Confidentiality Agreement**" shall have the meaning set forth in Section 8.4.

"**Conflict**" shall have the meaning set forth in Section 2.5.

"**Continuing Employee**" shall have the meaning set forth in Section 4.10(a).

"**Contract**" shall mean any written or oral contract, subcontract, note, bond, mortgage, indenture, lease, license, sublicense or other agreement or binding commitment.

"**Current Balance Sheet**" shall have the meaning set forth in Section 2.7.

"**D&O Indemnitees**" shall have the meaning set forth in Section 4.11(a).

"**D&O Tail Policy**" shall have the meaning set forth in Section 4.11(b).

"**debt**" shall have the meaning set forth in Section 3.11.

"**Debt Commitment Letter**" shall have the meaning set forth in Section 3.9(a).

"**Debt Fee Letter**" shall have the meaning set forth in Section 3.9(a).

"**Debt Financing**" shall have the meaning set forth in Section 3.9(a).

"**Debt Financing Source**" shall mean each Lender and each other Person (including, without limitation, each agent and arranger) that have committed to provide or otherwise entered into agreements (other than Parent, Merger Sub and the Guarantors) in connection with the Debt Financing or other financings in connection with the transactions contemplated hereby, including (without limitation) any commitment letters, engagement letters, credit agreements, loan agreements or indentures relating thereto, together with each Affiliate thereof and each officer, director, employee, partner, controlling person, advisor, attorney, agent and representative of each such lender, other Person or Affiliate or permitted successors and assigns of any of the foregoing.

"**Debt Financing Source Related Parties**" shall have the meaning set forth in Section 8.16.

"**DGCL**" shall have the meaning set forth in Section 1.1.

"**Disclosure Schedule**" shall have the meaning set forth in ARTICLE II.

"**Dispute Statement**" shall have the meaning set forth in Section 1.9(d).

"**Dissenting Shares**" shall have the meaning set forth in Section 1.7(a).

"**DRAA**" shall have the meaning set forth in Section 7.3(c)(ii).

"**Effective Time**" shall have the meaning set forth in Section 1.3.

"**Employee**" shall mean any current, former, or retired employee, officer, manager, or director of the Company or any of its Subsidiaries.

"**Environmental Laws**" shall mean all applicable Laws and binding Orders concerning pollution, public or worker health and safety (with respect to Hazardous Substances), or protection of the environment.

"**Equity Commitment Letter**" shall have the meaning set forth in Section 3.9(a).

"**Equity Financing**" shall have the meaning set forth in Section 3.9(a).

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended and the rulings and regulations thereunder.

"**ERISA Affiliate**" shall mean any Person under common control with the Company or any of its Subsidiaries within the meaning of Section 414(b), (c), (m) or (o) of the Code, and the regulations issued thereunder.

"**Escrow Agent**" shall have the meaning set forth in Section 1.2(b).

"**Escrow Agreement**" shall have the meaning set forth in Section 1.2(b).

"**Estimated Merger Consideration**" shall have the meaning set forth in Section 1.9(b).

"**Estimated Tax Refund Amount**" shall have the meaning set forth in Section 4.13(j).

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Excluded Share**" shall have the meaning set forth in Section 1.6(b)(ii).

"**Ex-Im Laws**" shall mean all U.S. and non-U.S. Laws relating to export, reexport, transfer, and import controls, including, without limitation, the Export Administration Regulations, the customs and import Laws administered by U.S. Customs and Border Protection, and the EU Dual Use Regulation.

"**Expiration Date**" shall have the meaning set forth in Section 7.1.

"**FCC**" shall mean the Federal Communications Commission and any successor governmental agency performing functions similar to those performed by the Federal Communications Commission on the date hereof.

"**FCPA**" shall have the meaning set forth in Section 2.12.

"**Final Award**" shall have the meaning set forth in Section 7.3(c)(ii).

"**Final Merger Consideration**" shall have the meaning set forth in Section 1.9(f)(i).

"**Financial Statements**" shall have the meaning set forth in Section 2.7.

"**Financing**" shall have the meaning set forth in Section 3.9(a).

"**Financing Agreements**" shall have the meaning set forth in Section 4.12(d).

"**Foreign Company Benefit Plan**" shall have the meaning set forth in Section 2.20(h).

"**Fully Diluted Shares**" shall mean the *sum* of (a) the number of shares of the Company Common Stock issued and outstanding immediately prior to the Effective Time, *plus* (b) the number of shares of the Company Common Stock issuable upon exercise of all In the Money Company Options, as of the applicable date of determination.

"**GAAP**" shall mean United States generally accepted accounting principles.

"**Governmental Authority**" shall mean any government, any governmental or regulatory entity or body, department, commission, board, agency or instrumentality, and any court, tribunal or judicial body, in each case whether federal, state, county, provincial, and whether local or foreign, including any arbitral body (public or private).

"**Guarantor**" shall have the meaning set forth in Recital D.

"**Guaranty**" shall have the meaning set forth in Recital D.

"**Hazardous Substances**" is any material, chemical, or substance that has been classified or designated by any Governmental Authority pursuant to Environmental Law to be "radioactive", "toxic", "hazardous", or a "pollutant," or for which liability or standards of conduct may be imposed under Environmental Law, including petroleum products or byproducts, asbestos, and polychlorinated biphenyls.

"**HSR Act**" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Improvements**" shall have the meaning set forth in Section 2.18(c).

"**Income Tax Reserve**" shall mean a reserve for the accrued and unpaid Income Taxes of the Company and its Subsidiaries, including the estimated impact of Transaction Tax Deductions to the extent that such deductions can be claimed as a current deduction in the Pre-Closing Taxable Period in which the Closing occurs (but excluding the impact of such deductions to the extent realized through a carryback of net operating losses or other tax attributes). In no event shall the Income Tax Reserve be less than $0.

"**Income Taxes**" shall mean any federal, state, local or non-U.S. Taxes measured by or imposed on gross or net income (including, for the avoidance of doubt, franchise taxes imposed in lieu of income Taxes) but excluding any Sales and Use Taxes.

"**Indebtedness**" shall mean, with respect to any Person, any of the following, without duplication: (a) any indebtedness of such Person for borrowed money, (b) any indebtedness of such Person evidenced by notes, bonds or debentures, (c) any obligations for leases required to be recorded as capital leases under GAAP, (d) all obligations of such Person in respect of letters of credit, performance bonds, bankers' acceptances, surety bonds and similar facilities (but solely to the extent drawn), (e) all liabilities of such Person arising out of interest rate, currency or other swap or hedge arrangements (other than the arrangements set forth on Section A-1 of the Disclosure Schedule, and renewals thereof in the ordinary course of business), (f) all liabilities of such Person for deferred purchase price of property or services and all deferred purchase price liabilities related to past acquisitions, whether contingent or otherwise (including any "earn-out" or similar payments or obligations), (g) in the case of the Company and its Subsidiaries, an amount equal to the Income Tax Reserve; (h) any other liability or obligation of such Person secured by a Lien (other than a Permitted Lien) on the capital stock, assets or property of such Person, (i) in the case of the Company and its Subsidiaries, an amount equal to the Pre-Closing Sales and Use Tax Reserve and (j) any guaranty by such Person of any indebtedness of any other Person of a type described in clauses (a) through (i) above, including, for each of the foregoing clauses (a) through (j), any principal, premium, accrued and unpaid interest, related expenses, prepayment penalties, make-whole payments, commitment, breakage and other similar fees, premiums, expenses or other amounts due on payment. Notwithstanding the foregoing, Indebtedness shall exclude (i) any unsecured trade payables arising in the ordinary course of business (and, in the case of the Company and its Subsidiaries, included in the calculation of Closing Net Working Capital), (ii) any operating lease obligations, (iii) any undrawn letters of credit, performance bonds, bankers acceptances or similar obligations and (iv) any Unpaid Transaction Expenses (to the extent resulting in a dollar for dollar reduction of Merger Consideration).

"**In the Money Company Option**" shall mean, as of any time, any Company Option that is outstanding immediately prior to the Effective Time for which the Option Consideration has become payable under this Agreement as of such time.

"**Information Statement**" shall have the meaning set forth in Section 4.3(b).

"**Initial Consideration**" shall have the meaning set forth in Section 1.6(e).

"**Intellectual Property Rights**" shall mean any or all statutory or common law rights in, to, or arising under the following, anywhere in the world: (i) patents and patent applications (including all patent and patent applications that are reissues, divisions, renewals, extensions, provisionals, continuations, continuations-in-part and reexaminations thereof); (ii) works of authorship, including copyrights, "moral" rights and mask work rights; (iii) trade secrets and know how; (iv) trademarks, trade names, logos and service marks, together with the goodwill of the business symbolized by or associated with any of the foregoing (including all translations, adaptations, derivations and combinations thereof); (v) domain names, web addresses and social media identifiers; (vi) any registrations or applications for registration for any of the foregoing, including any provisionals, divisions, continuations, continuations-in-part, renewals, reissuances,

re-examinations and extensions (as applicable); and (vii) all other intellectual property rights existing anywhere in the world.

"**IRS**" shall mean the United States Internal Revenue Service.

"**Knowledge**" shall mean with respect to the Company, the actual knowledge as of the date hereof of the individuals identified on Annex K after reasonable inquiry of their direct reports.

"**Law**" shall mean any applicable law, statute, constitution, principle of common law, ordinance, code, rule, regulation, ruling or other legal requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"**Lease Agreements**" shall have the meaning set forth in Section 2.18(a).

"**Leased Real Property**" shall have the meaning set forth in Section 2.18(a).

"**Lenders**" shall have the meaning set forth in Section 3.9(a).

"**Letter of Transmittal**" shall have the meaning set forth in Section 1.8(a).

"**Liens**" shall mean any lien, pledge, hypothecation, charge, license, mortgage, security interest, restriction on transfer or encumbrance of any nature.

"**Losses**" shall have the meaning set forth in Section 7.2.

"**made available**" means that the Company or any of its representatives has posted such materials to the virtual data room hosted by IntraLinks and made available to Parent and its representatives during the negotiation of this Agreement, but only if so posted and made available at or prior to two (2) Business Days prior to the date of this Agreement and remaining so posted and available through the Effective Time.

"**Major Securityholder**" shall have the meaning set forth in Section 1.2(c).

"**Marketing Period**" shall mean the first period of 15 consecutive Business Days after the date of this Agreement throughout which (a) Parent shall have the Required Financial Information and the Company shall have delivered the authorization letters contemplated by Section 4.12(g) (*Financing - Cooperation*) and (b) the conditions set forth in Section 5.1 are satisfied and nothing has occurred and no condition exists that would cause any of the conditions set forth in Section 5.2 (*Additional Conditions to the Obligations of Parent and Merger Sub*) to fail to be satisfied (provided, that this clause (b) shall not apply with respect to the conditions in Section 5.1(a) (solely to the extent relating to an approval or consent contemplated by Section 5.1(c)), (b), (c) and (e), and the satisfaction or waiver of the conditions in Section 5.1(a) (solely to the extent relating to an approval or consent contemplated by Section 5.1(c)), (b), (c) and (e)

shall not be a prerequisite to the commencement of the Marketing Period, in each case, from and after the date that is 15 Business Days prior to the Outside Date, solely if the transactions contemplated by this Agreement become subject to the review or approval of Team Telecom); *provided, however*, that (i) (x) November 23, 2016 and November 25, 2016 shall be excluded from the determination of such Marketing Period and (y) such Marketing Period shall end on or prior to December 21, 2016, or, if such Marketing Period has not ended on or prior to December 21, 2016, then such Marketing Period shall not commence prior to January 3, 2017, (ii) the Marketing Period shall end on any earlier date on which the Debt Financing is consummated and Parent shall have obtained all of the proceeds contemplated thereby and (iii) the Marketing Period shall not be deemed to have commenced if, prior to the completion of such 15 consecutive Business Day period, (A) EY shall have withdrawn its audit opinion with respect to any year end audited financial statements set forth in the Required Financial Information, in which case the Marketing Period shall not commence unless and until a new unqualified audit opinion is issued with respect to the consolidated financial statements of the Company for the applicable periods by EY or another independent public accounting firm of recognized national standing or (B) the Company shall have announced, or the board of directors of the Company shall have determined, that a restatement of any material financial information included in the Required Financial Information is required, in which case the Marketing Period shall be deemed not to commence unless and until such restatement has been completed and the Required Financial Information has been amended to reflect such restatement or the Company has determined that no restatement shall be required; *provided, further*, that if the Company shall in good faith reasonably believe that it has delivered the Required Financial Information, it may deliver to Parent a written notice to that effect (stating when it believes it completed such delivery) in which case the requirement of delivery of the Required Financial Information in the foregoing clause (a) shall be deemed to have been satisfied on the date specified in such notice unless Parent reasonably believes the Company has not completed delivery of the Required Financial Information and within five (5) calendar days after receipt of such notice from the Company delivers a written notice to the Company to that effect (stating with reasonable specificity which Required Financial Information the Company has not delivered to Parent).

"**Material Customers**" shall have the meaning set forth in Section 2.24.

"**Material Vendors**" shall have the meaning set forth in Section 2.24.

"**Maximum Annual Premium**" shall have the meaning set forth in Section 4.11(c).

"**Merger**" shall have the meaning set forth in Recital A.

"**Merger Consideration**" shall have the meaning set forth in Section 1.9(a).

"**Merger Sub**" shall have the meaning set forth in the Preamble.

"**Modification**" shall have the meaning set forth in Section 4.10(d).

"**Negative Adjustment**" shall have the meaning set forth in Section 1.9(f)(iii).

"**Net Working Capital Target**" shall mean [redacted].

"**Neutral Arbitrator**" shall have the meaning set forth in Section 7.3(c)(ii).

[redacted]

"**Non-Recourse Party**" shall mean any past, present or future director, officer, employee, incorporator, member, manager, partner, direct or indirect equityholder, Affiliate, agent, attorney, advisor, assignee or representative or Affiliate of any of the foregoing of any named party.

[redacted]

"**Oak Hill Management Agreement**" shall mean that certain Expense Reimbursement Agreement, dated as of June 20, 2011, by and among Oak Hill Capital Management, LLC, Oak Hill Capital Partners III and the Company.

"**Objection Notice**" shall have the meaning set forth in Section 7.3(b).

"**Open Source Materials**" shall mean any software distributed as "free software" or "open source software" or otherwise generally distributed publicly (in source code form in the case of open source software) under the terms that permit modification and redistribution of such software. Open Source Material includes software code and materials that are licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, and/or MIT License.

"**Option Consideration**" means, with respect to each share of Company Common Stock underlying each Company Option outstanding immediately prior to the Effective Time, an amount, rounded to four decimal places, equal to (a) the *excess* of (i) the Per Share Common Closing Merger Consideration *minus* (ii) the exercise price per share of the Company Common Stock issuable upon exercise of such Company Option, (b) the right to receive the Per Share Positive Adjustment, as and when payable in accordance with the terms of this Agreement; *provided, however*, that in the event the exercise price per share of the Company Common Stock issuable upon exercise of such Company Option exceeds the Per Share Common Closing Merger Consideration, then any amount that becomes payable under this clause (b) of this paragraph will be reduced by the amount of the exercise price not previously reduced by another clause of this definition (including clause (a)), (c) the right to receive the Per Share Adjustment Escrow Fund Consideration; *provided, however*, that in the event the exercise price per share of the Company Common Stock issuable upon exercise of such Company Option exceeds the Per Share Common Closing Merger Consideration, then any amount that becomes payable under this clause (c) of this paragraph will be reduced by the amount of the exercise price not previously reduced by another clause of this definition (including clause (a) and/or (b)), (d) the right to receive the Per Share Seller Representative Fund Consideration, as and when payable in accordance with the terms of this Agreement; *provided, however*, that in the event the exercise price per share of the Company Common Stock issuable upon exercise of such Company Option exceeds the Per Share

Common Closing Merger Consideration, then any amount that becomes payable under this clause (d) of this paragraph will be reduced by the amount of the exercise price not previously reduced by another clause of this definition (including clause (a), (b) and/or (c)), and (e) the right to receive the Closing Tax Refund Payments or the Per Share Tax Refund Amounts, as applicable; *provided, however*, that in the event the exercise price per share of the Company Common Stock issuable upon exercise of such Company Option exceeds the Per Share Common Closing Merger Consideration, then any amount that becomes payable under this clause (e) of this paragraph will be reduced by the amount of the exercise price not previously reduced by another clause of this definition (including clause (a), (b), (c) and/or (d)). The amount set forth in clause (a) of this paragraph is referred to herein as the "**Option Closing Consideration**."

"**Optionholder**" shall mean any holder of any Company Options outstanding immediately prior to the Effective Time.

"**Order**" shall mean any order, judgment, decision, decree, determination, injunction, award, settlement, ruling, writ or assessment of any Governmental Authority (whether temporary, preliminary or permanent) that is binding on any Person or its property under applicable Law.

"**Organizational Documents**" means, with respect to any Person (other than an individual), (i) the certificate or articles of association or incorporation or organization or limited partnership or limited liability company, and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (ii) all by-laws, regulations, voting agreements, stockholder agreements, statutory books and registers, resolutions and similar documents, instruments or Contracts relating to the organization or governance of such Person, in each case, as amended or supplemented.

"**Outside Date**" shall have the meaning set forth in Section 6.1(b).

"**Parent**" shall have the meaning set forth in the Preamble.

"**Parent and Merger Sub Charter Documents**" shall have the meaning set forth in Section 3.1.

"**Parent Fundamental Representations**" means the representations and warranties of Parent and Merger Sub set forth in Section 3.1 (*Organization*), Section 3.2 (*Authority*), and Section 3.8 (*Brokers' Fees*).

"**Parent Indemnified Party**" shall have the meaning set forth in Section 7.2.

"**Parent Liability Limitation**" shall have the meaning set forth in Section 6.3(c).

"**Parent Material Adverse Effect**" shall mean any change, event or effect that is or would reasonably be expected to be materially adverse to Parent's or Merger Sub's ability to

consummate the transactions contemplated by this Agreement in accordance with the terms of this Agreement and applicable Law in a timely manner.

"**Parent Plan**" shall have the meaning set forth in Section 4.10(b).

"**Parent Related Parties**" shall have the meaning set forth in Section 6.3(c).

"**Party**" shall have the meaning set forth in the Preamble.

"**Paying Agent**" shall have the meaning set forth in Section 1.2(b).

"**Paying Agent Agreement**" shall have the meaning set forth in Section 1.2(b).

"**Payment Fund**" shall have the meaning set forth in Section 1.2(b).

"**Payment Spreadsheet**" shall have the meaning set forth in Section 4.4(a).

"**Payoff Indebtedness**" shall mean the Indebtedness of the Company and its Subsidiaries set forth in clauses (a) and (b) of the definition of Indebtedness.

"**Per Share Adjustment Escrow Fund Consideration**" shall mean an amount, as of any time, rounded to four decimal places, equal to the quotient obtained by *dividing* (a) the aggregate amount to be disbursed to Securityholders out of the Adjustment Escrow Fund at such time pursuant to this Agreement and the Escrow Agreement, *by* (b) the number of Fully Diluted Shares.

"**Per Share Common Merger Consideration**" shall mean an amount, rounded to four decimal places, equal to (a) the quotient obtained by *dividing* (i) the Estimated Merger Consideration *minus* the Adjustment Escrow Amount *minus* the Seller Representative Fund Amount, *by* (ii) the number of Fully Diluted Shares as of immediately prior to the Effective Time, *plus* (b) the right to receive the Per Share Positive Adjustment, if any, as and when payable in accordance with the terms of this Agreement, *plus* (c) the right to receive the Per Share Adjustment Escrow Fund Consideration, if any, as and when payable in accordance with the terms of this Agreement and the Escrow Agreement, *plus* (d) the right to receive the Per Share Seller Representative Fund Consideration, if any, as and when payable in accordance with the terms of this Agreement, *plus* (e) the right to receive the Per Share Tax Refund Amounts, if any, as and when payable in accordance with the terms of this Agreement. The amount set forth in clause (a) of this paragraph is referred to herein as the "**Per Share Common Closing Merger Consideration**."

"**Per Share Positive Adjustment**" shall mean, if there is a Positive Adjustment, an amount, rounded to four decimal places, equal to the quotient obtained by *dividing* (a) the Positive Adjustment, *by* (b) the number of Fully Diluted Shares.

"**Per Share Seller Representative Fund Consideration**" shall mean an amount, as of any time, rounded to four decimal places, equal to the quotient obtained by *dividing* (a) the aggregate amount to be disbursed to Securityholders out of the Seller Representative Fund at such time pursuant to this Agreement, *by* (b) the number of Fully Diluted Shares.

"**Per Share Tax Refund Amounts**" shall have the meaning set forth in Section 4.13(j).

"**Permit**" shall mean any permits, licenses, authorizations, consents, approvals and franchises from Governmental Authorities.

"**Permitted Liens**" shall mean any of the following: (a) Liens for Taxes not yet due and payable, or which are being contested in good faith and for which adequate accruals or reserves have been established in accordance with GAAP; (b) mechanics, carriers', workmen's, warehouseman's, repairmen's, materialmen's or other similar Liens that are not yet due or that are being contested in good faith and by appropriate proceedings; (c) leases and subleases (other than capital leases and leases underlying sale and leaseback transactions); (d) pledges or deposits to secure obligations under workers' compensation Laws or similar legislation; (e) pledges and deposits to secure the performance of bids, trade contracts, leases, surety and appeal bonds, performance bonds and other obligations of a similar nature, in each case in the ordinary course of business, (f) Liens or other defects, imperfections or irregularities in title, easements, covenants and rights of way (unrecorded and of record) and other similar restrictions, and zoning, building and other similar codes or restrictions, in each case that do not adversely affect in any material respect the current use of the applicable real property leased, used or held for use by the Company or any of its Subsidiaries; (g) Liens the existence of which are disclosed in Section A-2 of the Disclosure Schedule; (h) statutory, common law or contractual liens to secure landlords, lessors or renters or Liens imposed on the underlying fee interest in Company real property, in each case, that do not adversely affect in any material respect the current use of the applicable real property leased, used or held for use by the Company or any of its Subsidiaries; and (i) with respect to Technology and Intellectual Property Rights, restrictions associated with nonexclusive licenses and covenants for Shrink Wrap Code.

"**Person**" shall mean an individual, corporation, partnership, association, limited liability company, trust, estate or other similar business entity or organization, including a Governmental Authority.

"**Personal Data**" shall mean any and all information that can reasonably be associated with an individual natural person, including information that identifies or could be used to identify an individual natural person, including name, physical address, telephone number, email address, financial account number, government-issued identifier (including Social Security number and driver's license number), medical, health or insurance information, gender, date of birth, educational or employment information, religious or political views or affiliations, and marital or other status (to the extent any of these data elements can reasonably be associated with an individual natural person, or is linked to any such data element that can reasonably be associated with an individual natural person).

"**Pillsbury**" shall have the meaning set forth in Section 8.14.

"**Plan**" shall have the meaning set forth in Section 2.19(n).

"**Positive Adjustment**" shall have the meaning set forth in Section 1.9(f)(ii).

"**Post-Closing Statement**" shall have the meaning set forth in Section 1.9(c).

"**Post-Closing Tax Refund Payments**" shall have the meaning set forth in Section 4.13(j).

"**Post-Closing Taxable Period**" shall mean any taxable period beginning after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period following the Closing Date.

"**Pre-Closing Period**" shall mean the period from the date hereof through the Effective Time.

[redacted]

"**Pre-Closing Statement**" shall have the meaning set forth in Section 1.9(b).

"**Pre-Closing Taxable Period**" shall have the meaning set forth in Section 4.13(b).

"**Pro Rata Portion**" shall mean, as of any time, with respect to any Securityholder, the quotient obtained by dividing (i) the sum of (a) the aggregate number of shares of Company Common Stock held by such Securityholder immediately prior to the Effective Time, plus (b) the aggregate number of shares of Company Common Stock issuable upon the exercise in full of all In the Money Company Options held by such Securityholder (without giving effect to any cancellation thereof being effected in connection with this Agreement), by (ii) the Fully Diluted Shares (calculated as of such date); *provided*, that with respect to any payments to the Securityholders after the Closing, including the Per Share Positive Adjustment, the Per Share Adjustment Escrow Fund Consideration and the Per Share Seller Representative Fund Consideration (other than the Per Share Tax Refund Amount, which shall be allocated pursuant to Section 4.13(j) (*Transaction Tax Deductions*)), or any payments by the Securityholders after the Closing under ARTICLE VII or the Related Agreements, the calculation of "Pro Rata Portion" will be subject to the mechanism set forth in Section 1.6(e).

"**Registered Intellectual Property**" means Intellectual Property Rights that have been registered, filed, certified or otherwise perfected or recorded with or by any Governmental

Authority or quasi-public legal authority (including domain name registrars), or any applications for any of the foregoing.

"**Reinvesting Securityholders**" shall have the meaning set forth in Recital E.

"**Reinvestment Agreement**" shall have the meaning set forth in Recital E.

"**Related Agreements**" means the Certificate of Merger, the Escrow Agreement, the Paying Agent Agreement, the Letters of Transmittal, the Securityholder Support Agreements, the Written Consents and the certificates and other agreements delivered in connection herewith and therewith.

"**Releasing Parties**" shall have the meaning set forth in Section 6.3(c).

"**Remaining Adjustment Escrow Fund**" shall have the meaning set forth in Section 1.9(f)(iv).

"**Representative**" shall mean, with respect to any Person, any director, officer or Employee of such Person, or any financial advisor, accountant, legal counsel, consultant or other authorized agent or representative retained by such Person.

"**Required Approvals**" shall have the meaning set forth in Section 4.8(b).

"**Required Financial Information**" shall mean collectively (i) the Financial Statements, (ii) (A) if the Closing Date occurs on or after November 14, 2016, the unaudited consolidated balance sheets of the Company and its Subsidiaries, as of September 30, 2016 and the related unaudited consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for the nine month period then ended and (B) if the Closing Date occurs on or after March 1, 2017, the unaudited consolidated balance sheet of the Company and its subsidiaries as of December 31, 2016 and the related unaudited consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for the twelve month period then ended, (iii) customary business and financial information reasonably requested by Parent to assist Parent in its preparation of the pro forma financial statements identified in clause (3) of paragraph 6 of Exhibit D of the Commitment Letter and (iv) information regarding the Company and its Subsidiaries customary for the arrangement of loans contemplated by the Debt Financing, to the extent reasonably available to the Company and its Subsidiaries to assist in the preparation of customary offering or information documents or rating agency or lender presentations relating to such arrangement of loans (which, for the avoidance of doubt, will not include (or be deemed to require the Company or its Subsidiaries to prepare) any (1) pro forma financial statements or adjustments (including regarding any synergies, cost savings, ownership or other post-closing adjustments) or projections (*provided* that the Company will reasonably cooperate and assist Parent and Merger Sub in its preparation of such materials)).

"**Requisite Stockholder Approval**" shall mean the approval of at least a majority of the Company Common Stock.

"**Resolution Period**" shall have the meaning set forth in Section 1.9(e).

"**Review Period**" shall have the meaning set forth in Section 1.9(d).

"**Rollover Agreement**" shall have the meaning set forth in Section 1.10.

"**Rollover Shares**" shall have the meaning set forth in Section 1.10.

[redacted] shall have the meaning set forth in Section 7.2(b).

"**Sanctions Laws**" shall mean all U.S. and non-U.S. Laws relating to economic or trade sanctions, including, without limitation, the Laws administered or enforced by the United States (including by the U.S. Department of Treasury Office of Foreign Assets Control ("**OFAC**") or the U.S. Department of State), the United Nations Security Council, and the European Union.

"**Sanctioned Person**" shall mean any Person that is the subject or target of sanctions or restrictions under Sanctions Laws or Ex-Im Laws, including: (i) any Person listed on any applicable U.S. or non-U.S. sanctions- or export-related restricted party list, including, without limitation, OFAC's Specially Designated Nationals and Blocked Persons List and the EU Consolidated List; (ii) any entity that is, in the aggregate, 50 percent or greater owned, directly or indirectly, or otherwise controlled by a Person or Persons described in clause (i); or (iii) any national of a country subject to comprehensive sanctions including, without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine (each an "**Embargoed Country**").

"**Securityholder**" shall mean each Stockholder and Optionholder.

"**Securityholder Note**" means any promissory note issued by a Securityholder in favor of the Company that is outstanding immediately prior to the Effective Time.

"**Securityholder Note Amount**" shall mean the amount of all principal and accrued and unpaid interest outstanding under a Securityholder Note as of immediately prior to the Effective Time.

"**Securityholder Support Agreements**" shall mean either a Major Securityholder Support Agreement or an Other Securityholder Support Agreement, in the applicable form set forth on Annex M-1 or M-2.

"**Seller Representative**" shall have the meaning set forth in the Preamble.

"**Seller Representative Fund**" shall have the meaning set forth in Section 1.2(b).

"**Seller Representative Fund Amount**" shall have the meaning set forth in Section 1.2(b).

"**Shrink Wrap Code**" means any generally commercially available (i) software, (ii) information technology systems or (iii) hosted or software-as-a-service offering, in each case that is available for a cost of not more than U.S. $10,000 for a single user's access or $100,000 in the aggregate for all users' access.

"**Solvent**" shall have the meaning set forth in Section 3.11.

"**State PUC**" means any state public utility commission, public service commission, board, or similar state Governmental Authority with jurisdiction over intrastate telecommunications services and/or facilities.

"**Stockholder**" shall mean any holder of any Company Capital Stock outstanding immediately prior to the Effective Time.

"**Stockholder Written Consent**" shall have the meaning set forth in Section 4.3(a).

"**Straddle Period**" shall have the meaning set forth in Section 4.13(g).

"**Stockholders Agreement**" shall mean that certain Amended and Restated Stockholders Agreement, dated as of April 6, 2012, by and among the Company and the Stockholders signatory thereto.

"**Subsidiary**" shall mean, with respect to any Person, any Person, whether incorporated or unincorporated, of which (a) such Person or any other subsidiary of such Person is a general partner (excluding such partnerships where such Person or any subsidiary of such Person does not have a majority of the voting interest in such partnership) or (b) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such Person is directly or indirectly owned or controlled by such Person or by any one or more of its subsidiaries.

"**Subsidiary Charter Documents**" shall have the meaning set forth in Section 2.3(b).

"**Surviving Corporation**" shall have the meaning set forth in Section 1.1.

"**Tax**" or, collectively, "**Taxes**" shall mean any U.S. federal, state, local or non-U.S. net income, alternative or add-on minimum, estimated, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, capital profits, lease, service, fringe benefits, license, withholding, payroll, employment, social security, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, registration, capital stock, social security (or similar), unemployment, disability, customs duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever (including any liability incurred or borne by virtue of the application of Treasury Regulation Section 1.1502-6 (or any similar or corresponding provision of state, local or non-U.S. Law)), as a transferee or successor, by contract or otherwise, together with all interest, penalties, additions to tax and additional amounts with respect thereto. For the avoidance of doubt, Tax shall include any amount owed to the

Universal Service Administrative Company or any similar or successor entity operating at the federal or state level.

"**Tax Authority**" shall mean any Governmental Authority responsible for the imposition or collection of any Tax.

"**Tax Proceeding**" shall have the meaning set forth in Section 4.13(d).

"**Tax Returns**" shall mean all returns, declarations, reports, estimates, elections, information statements, forms, reports, filed or required to be filed with any Governmental Authority relating to Taxes, including all schedules and attachments thereto, and including all amendments thereof.

"**Team Telecom**" means the working group of representatives from the Federal Governmental Authorities charged with ensuring national security, including: the Departments of Homeland Security, Defense, Justice, State, Treasury, and Commerce, as well as United States Trade Representative and the Federal Bureau of Investigation.

"**Technology**" shall mean all of the following, including all versions thereof and all technology from which such items were derived: (i) works of authorship, including all written, audio and visual materials and computer programs and software (whether in source code or in executable code form) and the related architecture and documentation; (ii) inventions (whether or not patentable), discoveries and improvements; (iii) trade secrets and proprietary and confidential know how; (iv) databases, data compilations and collections, and customer and technical data; (v) methods and processes; and (vi) devices, prototypes, designs and schematics.

"**Termination Fee**" shall have the meaning set forth in Section 6.3(a).

"**Third Party Claim**" shall have the meaning set forth in Section 7.3(d).

"**Trade Control Laws**" shall have the meaning set forth in Section 2.13.

"**Transaction Payroll Taxes**" shall mean the employer portion of any payroll or employment Taxes incurred in connection with any bonuses, change in control payments, retention or sale bonuses, success fees, cash-out or other settlement of Company Options, and any other compensatory payments made in connection with the transactions contemplated by this Agreement.

"**Transaction Tax Deductions**" shall mean the sum of all items (without duplication) of losses, deductions or credits, in each case to the extent deductible or creditable for Income Tax purposes, resulting from or attributable to (a) any (i) bonuses, change in control payments, retention or sale bonuses, severance payments, success fees or any other compensatory payments made in connection with the transactions contemplated by this Agreement, (ii) payments to Optionholders pursuant to this Agreement and (iii) any Transaction Payroll Taxes (but excluding the social security and unemployment Tax portions of any Transaction Payroll Taxes), (b)

unamortized loan fees of the Company and its Subsidiaries with respect to loans that are repaid as a result of the transactions contemplated by this Agreement, (c) payments of advisory or other fees to Deutsche Bank Securities Inc. and JPMorgan Chase & Co. for services rendered to the Seller Representative, the Company, and its Subsidiaries in connection with the transactions contemplated by this Agreement and (d) payments of advisory or other fees to other professionals or advisors for services rendered to the Seller Representative, the Company or its Subsidiaries in connection with the Transactions. The Parties agree that in calculating the amount of the Transaction Tax Deductions, the relevant taxpayer(s) shall be treated as having made the safe-harbor election set forth in IRS Revenue Procedure 2011-29 with respect to any of the foregoing amounts that may be subject to such election and the Company and its Subsidiaries will make such election to the extent permitted.

"**Transactions**" shall mean the transactions contemplated by this Agreement, including the Merger.

"**Transfer Taxes**" shall have the meaning set forth in Section 4.13(h).

"**U.S.**" or "**United States**" shall mean the United States of America.

"**Unadjusted Purchase Price**" shall have the meaning set forth in Section 1.9.

"**Unaudited Financial Statements**" shall have the meaning set forth in Section 2.7.

"**Unpaid Transaction Expenses**" shall mean the sum of (i) the legal, accounting, financial advisory, consulting, investment banking, brokers, finders and other similar fees and expenses of third parties incurred by the Company and its Subsidiaries in connection with the Transactions, plus (ii) any bonuses, change in control payments (excluding change in control payments resulting from double triggers if previously made available to Parent and set forth on Section 2.20(f) of the Disclosure Schedule), retention or sales bonuses, success fees, severance and any other compensatory payments payable to any Employee or individual service provider of the Company and its Subsidiaries or other Person prior to or as a result of the execution of this Agreement or the consummation of the transactions contemplated by this Agreement (including any amounts payable under the Key Employee Transaction Bonus Plan, if any, adopted by the Company's Board of Directors), and any Transaction Payroll Taxes (but excluding the social security and unemployment Tax portions of any Transaction Payroll Taxes), plus (iii) fees and expenses payable by the Company or any of its Subsidiaries pursuant to the Oak Hill Management Agreement, plus (iv) fifty percent (50%) of the cost of the D&O Tail Policy, in each case, to the extent unpaid as of immediately prior to the Effective Time. For the avoidance of doubt, Unpaid Transaction Expenses shall exclude: (i) any Closing Indebtedness (to the extent resulting in a dollar for dollar reduction of Merger Consideration), (ii) except as expressly set forth in clause (iv) above, any fees or expenses incurred by Parent or any of its financial advisors, attorneys, accountants, advisors, consultants or other representatives.

"**VAT**" shall have the meaning set forth in Section 2.19(s).

"**WSGR**" shall mean Wilson Sonsini Goodrich & Rosati, Professional Corporation.

Verifications

STATE OF CALIFORNIA §
§
CITY OF MOUNTAIN VIEW §

VERIFICATION

I, Michael J. Gold, hereby declare that I am President and CEO of AccessLine Communications Corporation ("AccessLine"); that I am authorized to make this Verification on behalf of AccessLine; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 16th day of September, 2016.

Name: Michael J. Gold
Title: President and Chief Executive Officer

STATE OF ILLINOIS §
§
CITY OF CHICAGO §

VERIFICATION

I, Annie Terry, hereby declare that I am a Principal, Deputy General Counsel and Chief Compliance Officer of Madison Dearborn Partners, LLC; that I am authorized to make this Verification on behalf of Madison Dearborn Partners, LLC; that the foregoing Joint Application was prepared under my direction and supervision; that the information and materials for which Applicants seek confidential treatment constitute commercial and/or financial information of a privileged and/or confidential nature and thus are exempt from public inspection under 29 Del.C. §10002(d)(2); and that the contents are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 22 day of September, 2016.

Name: Annie Terry
Title: Principal, Deputy General Counsel and Chief Compliance Officer
Madison Dearborn Partners, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 23, 2016, one copy of the foregoing Joint Application as filed with the Delaware Public Service Commission was served by express mail on the following:

David L. Bonar, Public Advocate
Division of the Public Advocate
820 N. French Street
4th Floor
Wilmington, Delaware 19801

MICHAEL BEDER