

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

**FORM 8-K**

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

Date of report (Date of earliest event reported): **October 13, 2017**

**Synchronoss Technologies, Inc.**  
(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**000-52049**  
(Commission  
File Number)

**06-1594540**  
(IRS Employer  
Identification No.)

**200 Crossing Boulevard, 8th Floor**  
**Bridgewater, New Jersey**  
(Address of Principal Executive Offices)

**08807**  
(Zip Code)

Registrant's telephone number, including area code: **(866) 620-3940**

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

**Item 1.01. Entry into a Material Definitive Agreement.**

On October 17, 2017, Synchronoss Technologies, Inc., a Delaware corporation ("Synchronoss" or the "Company") announced the entry into definitive agreements for the sale of Intralinks Holdings, Inc., a wholly owned subsidiary of Synchronoss ("Intralinks"), and the sale of a newly created series of preferred stock of Synchronoss to affiliates of Siris Capital Group, LLC ("Siris").

As of October 16, 2017, investment funds affiliated with Siris owned 5,994,667 shares of Synchronoss' common stock, par value \$0.0001 per share (the "Common Stock"), or approximately 12.6% of the issued and outstanding Common Stock as of such date (the "Existing Siris Shares").

Subject to the terms and conditions set forth in the Share Purchase Agreement, dated as of October 17, 2017 (the “Share Purchase Agreement”), among Synchronoss, Intralinks and Impala Private Holdings II, LLC, an affiliate of Siris (“Impala”), Impala will acquire from Synchronoss the issued and outstanding shares of common stock of Intralinks for approximately \$977 million in cash plus a potential contingent payment of up to \$25 million (as more fully described below), subject to an adjustment for cash, debt and working capital (the “Intralinks Transaction”).

In addition, subject to the terms and conditions set forth in the Securities Purchase Agreement, dated as of October 17, 2017 (the “PIPE Purchase Agreement”), between Synchronoss and Silver Private Holdings I, LLC, an affiliate of Siris (“Silver”), Synchronoss will issue and sell to Silver 185,000 shares of preferred stock of Synchronoss, par value \$0.0001 per share, with an initial liquidation preference of \$1,000 per share, which will be designated as Series A Convertible Participating Perpetual Preferred Stock (the “Series A Preferred Stock”), for an aggregate purchase price of \$185 million, consisting of (i) \$97.7 million in cash and (ii) the transfer from Silver to Synchronoss of the Existing Siris Shares, valued for this purpose at approximately \$87.3 million in the aggregate (the “Preferred Transaction”). Prior to or contemporaneously with the consummation of the Preferred Transaction, Synchronoss will (i) file a Certificate of Designation with the State of Delaware setting forth the rights, preferences, privileges, qualifications, restrictions and limitations on the Series A Preferred Stock (the “Series A Certificate”) and (ii) enter into an Investor Rights Agreement with Silver setting forth certain registration, governance and preemptive rights of Silver with respect to Synchronoss.

## **Sale of Intralinks**

### *Share Purchase Agreement*

Subject to the terms and conditions of the Share Purchase Agreement, at the closing of the Intralinks Transaction, Impala will acquire the issued and outstanding shares of Intralinks for approximately \$977 million in cash, subject to adjustments for changes in cash, debt and working capital. If, in the future, Impala receives net cash proceeds in excess of \$440 million from any sale of equity or assets of Intralinks, or from a dividend or distribution in respect of the shares of Intralinks, then Impala shall be required to pay Synchronoss up to an additional \$25 million in cash or, in some cases, publicly-traded securities. The closing of the Intralinks Transaction is subject to certain closing conditions, including (i) the receipt of certain antitrust and foreign competition approvals, (ii) the absence of any law or court or governmental order or injunction preventing, prohibiting or making illegal the consummation of the Intralinks Transaction, (iii) the entry into and delivery of a transition services agreement between Synchronoss and Impala, (iv) the receipt by Synchronoss (and delivery to Impala) of solvency and fairness opinions, (v) the absence of any Material Adverse Effect (as defined in the Share Purchase Agreement) with respect to Intralinks and (vi) Impala being satisfied in its reasonable discretion that no regulatory or other governmental development (other than under antitrust laws) affecting Intralinks or its subsidiaries, or any of its officers, employees or directors would reasonably be likely to cause an adverse effect on Intralinks, Impala or their respective affiliates (or adversely affect the benefits of the Intralinks Transaction to Impala or its affiliates) following consummation of the Intralinks Transaction. The closing of the Intralinks Transaction is not subject to any financing contingency. Immediately following the consummation of the Intralinks Transaction, Synchronoss will pay to Impala \$5 million as partial reimbursement of the out-of-pocket fees and expenses incurred by Impala, Siris and their respective affiliates in connection with the execution of the Share Purchase Agreement and the Intralinks Transaction.

The Share Purchase Agreement contains customary representations and warranties and covenants made by each of Impala, Intralinks and Synchronoss, which include covenants regarding: (i) the conduct of the operations of Intralinks prior to the consummation of the Intralinks Transaction, (ii) customary “no-shop” restrictions on Synchronoss’ ability to solicit alternative acquisition proposals for Intralinks and (iii) the use of reasonable best efforts to cause the Intralinks Transaction to be consummated.

Siris has obtained debt financing commitments from Royal Bank of Canada, Golub Capital LLC, and Macquarie Capital Funding LLC for the purpose of financing the transactions contemplated by the Share Purchase Agreement and paying related fees and expenses. The obligations of the lenders to provide debt financing under the debt commitment letter are subject to certain conditions.

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The Share Purchase Agreement contains specified termination rights for each of Synchronoss and Impala, including (i) if the consummation of the Intralinks Transaction is legally prohibited or enjoined by a final, non-appealable government order, (ii) if the consummation of the Intralinks Transaction has not occurred by January 15, 2018, (iii) if there are any material inaccuracies in the representations and warranties of the parties, or material breaches of the parties’ respective covenants that have not been cured within a specified time, (iv) if Impala is not satisfied in its reasonable discretion that no regulatory or other governmental development (other than under antitrust laws) affecting Intralinks or its subsidiaries or any of its officers, employees or directors would reasonably be likely to cause an adverse effect on Intralinks, Impala or their respective affiliates (or adversely affect the benefits of the Intralinks Transaction to Impala or its affiliates) following consummation of the Intralinks Transaction, or (v) by mutual written consent of the parties.

Impala may be required to pay Synchronoss a termination fee of approximately \$48.9 million upon termination of the Share Purchase Agreement under the following circumstances: (i) if (A) the marketing period has ended, (B) all other conditions to closing of the Intralinks Transaction have been satisfied or waived, (C) Synchronoss has irrevocably confirmed by written notice that, if the necessary debt and equity financing are funded, then it would take such actions as are within its control to consummate the Intralinks Transaction and (D) Impala fails to consummate the Intralinks Transaction within three business days of when the closing should have occurred and Synchronoss stood ready, willing and able to consummate the Intralinks Transaction at all times during such three-business-day period; or (ii) if Impala terminates the Share Purchase Agreement following January 15, 2018 and Synchronoss could have terminated the Share Purchase Agreement pursuant to prong (i), without giving effect to the three business day grace period. The Share Purchase Agreement further provides that Synchronoss may be required to reimburse Impala for certain of its expenses, up to a cap of \$5 million, if Impala terminates the agreement because Impala is not satisfied in its reasonable discretion that no regulatory or other governmental development (other than under antitrust laws) affecting Intralinks or its subsidiaries or any of its officers, employees or directors would reasonably be likely to cause an adverse effect on Intralinks, Impala or their respective affiliates (or adversely affect the benefits of the Intralinks Transaction to Impala or its affiliates) following consummation of the Intralinks Transaction (the “Intralinks Reimbursement”).

Additionally, should the consummation of the Intralinks Transaction occur after November 15, 2017 due to a material breach by Impala of its covenants under the Share Purchase Agreement, or a delay by Impala’s financing sources that constitutes a breach by such financing sources or that is related to a breach by Impala of its covenants under the Share Purchase Agreement, Impala will be required to reimburse Synchronoss for any amendment, consent or waiver fee that Synchronoss is required to pay its lenders pursuant to the Seller Credit Agreement (as defined in the Share Purchase Agreement), up to a cap of \$5 million.

Subject to the terms of the Share Purchase Agreement, Synchronoss and Impala have agreed to indemnify each other for certain damages, costs and expenses that result from breaches of their respective representations and warranties, breaches of covenants and certain other matters. Each party’s right to be

indemnified under the Share Purchase Agreement is subject to certain limitations, including a \$25 million cap on damages with respect to representations and warranties (other than with respect to (i) breaches of Synchronoss' representation with respect to the sufficiency of the assets transferred in the Intralinks Transaction, which are subject to a cap of \$50 million, (ii) breaches of Synchronoss' representation regarding the absence of misstatements or omissions of material facts, which is subject to a cap of \$50 million and (iii) breaches of Synchronoss' Fundamental Representations (as defined in the Purchase Agreement), which are subject to a cap equal to the purchase price). Additionally, Synchronoss has agreed to indemnify Impala, without limitation, for certain excluded liabilities, including, among others, liabilities arising out of any litigation, actions or investigations to which Synchronoss is a party, target or subject and expenses of Intralinks related to the Intralinks Transaction and not otherwise paid at or prior to the closing of the Intralinks Transaction.

This summary of the Share Purchase Agreement and the transactions contemplated thereby is qualified in its entirety by reference to the full text of the Share Purchase Agreement, a copy of which is attached as Exhibit 2.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference.

The Share Purchase Agreement has been included in this report to provide investors with information regarding its terms and conditions. It is not intended to provide any other factual information about Synchronoss, Intralinks and Impala or any of their respective subsidiaries. The representations, warranties and covenants contained in the Share Purchase Agreement were made only for purposes of that agreement and as of specific dates, were solely for the benefit of the parties to the Share Purchase Agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Share Purchase Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Share Purchase Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of Synchronoss, Intralinks and Impala or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Share Purchase Agreement, which subsequent information may or may not be fully reflected in Synchronoss' public disclosures.

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## **Sale of Series A Preferred Stock**

### *Securities Purchase Agreement*

Subject to the terms and conditions of the PIPE Purchase Agreement, Synchronoss will issue and sell to Silver 185,000 shares of Series A Preferred Stock for an aggregate purchase price of \$185 million, consisting of (i) \$97.7 million in cash and (ii) the Existing Siris Shares, valued for this purpose at approximately \$87.3 million in the aggregate. The PIPE Purchase Agreement contains customary representations, warranties and covenants by each of Synchronoss and Silver, including covenants by Synchronoss regarding: (i) the conduct of the business of Synchronoss prior to the consummation of the Preferred Transaction and (ii) the use of commercially reasonable best efforts to cause the Preferred Transaction to be consummated.

In addition, the PIPE Purchase Agreement contains certain termination rights for both Synchronoss and Silver, including if the Preferred Transaction has not been consummated within 90 calendar days unless such date has been extended in accordance with the terms of the PIPE Purchase Agreement, in which case, the parties may not terminate the PIPE Purchase Agreement until a business day following the date specified in such notice of extension. Silver may also terminate the agreement if Silver, in its reasonable discretion, is not satisfied with all due diligence facts and developments relating to Synchronoss, its affiliates or their respective officers, employees or directors, including with respect to any actions, inquiries or investigations by any governmental authority.

Under the terms of the PIPE Purchase Agreement, in the event the Preferred Transaction is not consummated, Synchronoss also granted Silver the right to sell the Existing Siris Shares to Synchronoss (the "Put Right") for a purchase price per share equal to \$14.56 in cash (corresponding to an aggregate purchase price of approximately \$87.3 million if Silver elects to exercise the Put Right with respect to all Existing Siris Shares). The Put Right is only exercisable by Silver by written notice delivered to Synchronoss not later than the fifth business day following any termination of the PIPE Purchase Agreement. Moreover, in connection with the Put Right, Synchronoss and Silver have agreed that, effective as of immediately prior to or substantially concurrently with the first to occur of the consummation of the Intralinks Transaction or the termination of the Share Purchase Agreement, Synchronoss and Silver will enter into a customary escrow agreement in respect of approximately \$87.3 million to be deposited into escrow by Synchronoss. The escrow agreement will provide, among other matters, that the funds will be released to Silver at Silver's direction upon its exercise of the Put Right by Silver and that the funds will be released to the Company upon consummation of the Preferred Transaction.

Pursuant to the PIPE Purchase Agreement, Synchronoss agreed to indemnify Silver and its affiliates for (i) any breach of any Fundamental Representation (as defined in the PIPE Purchase Agreement) or (ii) any breach of any of the covenants of Synchronoss contained in the PIPE Purchase Agreement, up to the \$185 million purchase price, subject to certain exceptions.

Additionally, Synchronoss has agreed to reimburse Silver for up to a maximum of \$5 million to cover Silver's reasonable costs and expenses incurred at or prior to the earlier of the closing of the Preferred Transaction and the date that the PIPE Purchase Agreement is terminated (the "PIPE Reimbursement"); provided, that, the PIPE Reimbursement shall be reduced by any Intralinks Reimbursement paid by Synchronoss such that the aggregate of the Intralinks Reimbursement and the PIPE Reimbursement shall not exceed \$5 million in the aggregate.

The PIPE Purchase Agreement is filed as Exhibit 2.2 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the PIPE Purchase Agreement is qualified in its entirety by reference to Exhibit 2.2.

### *Form of Certificate of Designation of the Series A Preferred Stock*

The rights, preferences, privileges, qualifications, restrictions and limitations of the shares of Series A Preferred Stock will be set forth in the Series A Certificate. Under the Series A Certificate, the holders of the Series A Preferred Stock will be entitled to receive, on each share of Series A Preferred Stock on a quarterly basis, an amount equal to the dividend rate of 14.5% divided by four and multiplied by the then-applicable Liquidation Preference (as defined in the Series A Certificate) per share of Series A Preferred Stock (collectively, the "Preferred Dividends"). The Preferred Dividends will be due on January 1, April 1, July 1 and October 1 of each year (each, a "Series A Dividend Payment Date"). Synchronoss may choose to pay the Preferred Dividends in cash or in additional shares of Series A Preferred Stock. In the event Synchronoss does not declare and pay a dividend in-kind or

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in cash on any Series A Dividend Payment Date, the unpaid amount of the Preferred Dividend will be added to the Liquidation Preference. In addition, the Series A Preferred Stock will participate in dividends declared and paid on shares of Common Stock.

Each share of Series A Preferred Stock will be convertible, at the option of the holder, into the number of shares of Common Stock equal to the “Conversion Price” (as that term is defined in the Series A Certificate) multiplied by the then applicable “Conversion Rate” (as that term is defined in the Series A Certificate). Each share of Series A Preferred Stock will initially be convertible into 55.5556 shares of Common Stock, representing an initial “conversion price” of approximately \$18.00 per share of Common Stock. The Conversion Rate will be subject to equitable proportionate adjustment in the event of stock splits, recapitalizations and other events set forth in the Series A Certificate.

On and after the fifth anniversary of the date of issuance, holders of shares of Series A Preferred Stock will have the right to cause Synchronoss to redeem each share of Series A Preferred Stock for cash in an amount equal to the sum of the current liquidation preference and any accrued dividends. Each share of Series A Preferred Stock will also be redeemable at the option of the holder upon the occurrence of a “Fundamental Change” (as that term is defined in the Series A Certificate) at a specified premium. In addition, the Company will also be permitted to redeem all outstanding shares of the Series A Preferred Stock (i) at any time within the first 30 months of the date of issuance for the sum of the then-applicable Liquidation Preference, accrued but unpaid dividends and a make whole amount and (ii) at any time following the 30-month anniversary of the date of issuance for the sum of the then-applicable Liquidation Preference and the accrued but unpaid dividends.

The holders of a majority of the Series A Preferred Stock, voting separately as a class, will be entitled at each annual meeting of the stockholders of the Company or at any special meeting called for the purpose of electing directors (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting): (i) to nominate and elect two members of the Board of Directors of Synchronoss for so long as the Preferred Percentage (as defined in the Series A Certificate) is equal to or greater than 10%; and (ii) to nominate and elect one member of the Board of Directors of Synchronoss for so long as the Preferred Percentage is equal to or greater than 5% but less than 10%.

For so long as the holders of shares of Series A Preferred Stock have the right to nominate at least one director, Synchronoss shall be required to obtain the prior approval of Silver before taking certain actions, including: (i) certain dividends, repayments and redemptions; (ii) any amendment to Synchronoss’ certificate of incorporation that adversely affects the rights, preferences, privileges or voting powers of the Series A Preferred Stock; (iii) issuances of stock ranking senior or equivalent to shares of Series A Preferred Stock (including additional shares of Series A Preferred Stock) in the priority of payment of dividends or in the distribution of assets upon any liquidation, dissolution or winding up of Synchronoss; (iv) changes in the size of the Board of Directors of Synchronoss; (v) any amendment, alteration, modification or repeal of the charter of the Nominating and Corporate Governance Committee of the Board of Directors and related documents; and (vi) any change in the principal business of Synchronoss or the entry into any line of business outside of its existing lines of businesses. In addition, in the event that Synchronoss is in EBITDA Non-Compliance (as defined in the Series A Certificate) or the undertaking of certain actions would result in Synchronoss exceeding a specified pro forma leverage ratio, then the prior approval of Silver would be required to incur indebtedness (or alter any debt document) in excess of \$10 million, enter or consummate any transaction where the fair market value exceeds \$5 million individually or \$10 million in the aggregate in a fiscal year or authorize or commit to capital expenditures in excess of \$25 million in a fiscal year.

Each holder of Series A Preferred Stock will have one vote per share on any matter on which holders of Series A Preferred Stock are entitled to vote separately as a class, whether at a meeting or by written consent. The holders of Series A Preferred Stock will be permitted to take any action or consent to any action with respect to such rights without a meeting by delivering a consent in writing or electronic transmission of the holders of the Series A Preferred Stock entitled to cast not less than the minimum number of votes that would be necessary to authorize, take or consent to such action at a meeting of stockholders. In addition to any vote (or action taken by written consent) of the holders of the shares of Series A Preferred Stock as a separate class provided for herein or by the General Corporation Law of the State of Delaware, the holders of shares of the Series A Preferred Stock will be entitled to vote with the holders of shares of Common Stock (and any other class or series that may similarly be entitled to vote with the holders of Common Stock) on all matters submitted to a vote or to the consent of the stockholders of the Company (including the election of directors) as one class.

Under the Series A Certificate, if Silver and certain of its affiliates have elected to effect a conversion of some or all of their shares of Series A Preferred Stock and if the sum, without duplication, of (i) the aggregate number of shares of Common Stock issued to such holders upon such conversion and any shares of Series A Preferred Stock previously issued to such holders upon conversion, plus (ii) the number of shares of Common Stock underlying shares of Series A Preferred Stock that would be held at such time by such holders (after giving effect to such conversion), would exceed the 19.99% of the issued and outstanding shares of Synchronoss’ voting stock on an as converted basis (the “Conversion Cap”), then such holders

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would only be entitled to convert such number of shares as would result in the sum of clauses (i) and (ii) (after giving effect to such conversion) being equal to the Conversion Cap (after giving effect to any such limitation on conversion). Any shares of Series A Preferred Stock which a holder has elected to convert but which, by reason of the previous sentence, are not so converted, will be treated as if the holder had not made such election to convert and such shares of Series A Preferred Stock will remain outstanding. Also, under the Series A Certificate, if the sum, without duplication, of (i) the aggregate voting power of the shares previously issued to Silver and certain of its affiliates held by such holders at the record date, plus (ii) the aggregate voting power of the shares of Series A Preferred Stock held by such holders as of such record date, would exceed 19.99% of the total voting power of Synchronoss’ outstanding voting stock at such record date, then, with respect to such shares, Silver and certain of its affiliates will only be entitled to cast a number of votes equal to 19.99% of such total voting power. The limitation on conversion and voting will cease to apply upon receipt of the requisite approval of holders of Common Stock under the applicable listing standards.

The Series A Certificate is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the Series A Certificate is qualified in its entirety by reference to Exhibit 3.1.

#### *Form of Investor Rights Agreement*

Concurrently with the closing of the Preferred Transaction, Synchronoss and Silver will enter into an Investor Rights Agreement (the “Investor Rights Agreement”). Under the terms of the Investor Rights Agreement, Silver and Synchronoss have agreed that, effective as of the closing of the Preferred Transaction, the Board of Directors of Synchronoss will consist of ten members. From and after the closing of the Preferred Transaction, so long as the holders of Series A Preferred Stock have the right to nominate a member to the Board of Directors pursuant to the Series A Certificate, the Board of Directors of Synchronoss will consist of (i) two directors nominated and elected by the holders of shares of Series A Preferred Stock; (ii) four directors who meet the independence criteria set forth in the applicable listing standards (each of whom will be initially agreed upon by Synchronoss and Silver); and (iii) four other

directors, two of whom shall satisfy the independence criteria of the applicable listing standards and, as of the closing of the Preferred Transaction, one of whom shall be the individual then serving as chief executive officer of Synchronoss and one of whom shall be the current chairman of the Board of Directors of Synchronoss as of the date of execution of the Investors Rights Agreement. Following the closing of the Preferred Transaction, so long as the holders of Series A Preferred Stock have the right to nominate at least one director to the Board of Directors of Synchronoss pursuant to the Series A Certificate, Silver will have the right to designate two members of the Nominating and Corporate Governance Committee of the Board of Directors.

Pursuant to the terms of the Investor Rights Agreement, neither Silver nor its affiliates may transfer any shares of Series A Preferred Stock subject to certain exceptions (including transfers to affiliates that agree to be bound by the terms of the Investor Rights Agreement).

For so long as Silver has the right to appoint a director to the Board of Directors of Synchronoss, without the prior approval by a majority of directors voting who are not appointed by the holders of shares of Series A Preferred Stock, neither Silver nor its affiliates will directly or indirectly purchase or acquire any debt or equity securities of Synchronoss (including equity-linked derivative securities) if such purchase or acquisition would result in Silver's Standstill Percentage (as defined in the Investor Rights Agreement) being in excess of 30%. However, the foregoing standstill restrictions would not prohibit the purchase of shares pursuant to the PIPE Purchase Agreement or the receipt of shares of Series A Preferred Stock issued as Preferred Dividends pursuant to the Series A Certificate, shares of Common Stock received upon conversion of shares of Series A Preferred Stock or receipt of any shares of Series A Preferred Stock, Common Stock or other securities of the Company otherwise paid as dividends or as an increase of the Liquidation Preference (as defined in the Series A Certificate) or distributions thereon. Silver will also have preemptive rights with respect to issuances of securities of Synchronoss in order to maintain its ownership percentage.

Under the terms of the Investor Rights Agreement, Silver will be entitled to (i) three demand registrations, with no more than two demand registrations in any single calendar year and provided that each demand registration must include at least 10% of the shares of Common Stock held by Silver, including shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock and (ii) unlimited piggyback registration rights with respect to primary issuances and all other issuances.

The form of the Investor Rights Agreement is filed as Exhibit 4.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the Investor Rights Agreement is qualified in its entirety by reference to Exhibit 4.1.

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**Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.**

On October 13, 2017, Synchronoss received a notice of default (the "Notice") relating to its 0.75% Convertible Senior Notes, due 2019. The Notice was delivered to Synchronoss by the Holders (as defined in the Indenture (as defined below)) of at least 25% of the Outstanding Securities (as defined in the Indenture) pursuant to Section 8.01(f) of that certain indenture dated as of August 12, 2014 by and between Synchronoss and The Bank of New York Mellon, as trustee (the "Trustee"), as amended, modified or supplemented from time to time (the "Indenture"). The Notice states that Synchronoss has failed to timely file with the Trustee the reports required to be filed with the Securities and Exchange Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Reporting Default"). The Notice demands that Synchronoss remedy the Reporting Default as soon as possible, and seeks certain other remedies under the Indenture.

Under Section 8.03 of the Indenture, if so elected by Synchronoss, the sole remedy for any Event of Default (as defined in the Indenture) resulting from any Reporting Default will, for the first 360 calendar days after the occurrence of such Event of Default, consist exclusively of the right to receive additional interest on the Outstanding Securities at an annual rate equal to (i) 0.25% of the principal amount of Outstanding Securities during the first 180 calendar days after the occurrence of such Event of Default during which such Event of Default is continuing and (ii) 0.50% of the principal amount of Outstanding Securities for each day from the 181<sup>st</sup> day to, and including, the 360<sup>th</sup> calendar day following the occurrence of such Event of Default during which such Event of Default is continuing.

**Item 3.02 Unregistered Sales of Equity Securities.**

The information regarding the PIPE Purchase Agreement contained in Item 1.01 is incorporated herein by reference.

As described in Item 1.01, under the terms of the PIPE Purchase Agreement, Synchronoss has agreed to issue shares of Series A Preferred Stock to Silver. This issuance and sale will be exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 4(a)(2) of the Securities Act. In the PIPE Purchase Agreement, Silver represented to Synchronoss that it is an "accredited investor" as defined in Rule 501 of the Securities Act and that the shares of Series A Preferred Stock are being acquired for investment purposes and not with a view to, or for sale in connection with, any distribution thereof, and appropriate legends will be affixed to any certificates evidencing the shares of Series A Preferred Stock or any Common Stock issued upon conversion thereof.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

The information regarding the appointment of directors contained in Item 1.01 is incorporated herein by reference.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

The information regarding the Series A Certificate contained in Item 1.01 is incorporated herein by reference.

**Item 8.01 Other Events.**

On October 17, 2017, Synchronoss issued a press release announcing that it had entered into the Share Purchase Agreement and the PIPE Purchase Agreement. The press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and incorporated by reference herein.

**Forward Looking Statements**

This Form 8-K contains forward-looking statements, including the statements regarding the plans, strategies and objectives of management for future operations, effects of current or future economic conditions or performance and industry trends, the ability to satisfy the closing conditions to the transactions, the expected close of the transactions contemplated by the Share Purchase Agreement and PIPE Purchase Agreement and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. All forward-looking statements contained in this Form 8-K involve risks and uncertainties. Synchronoss' actual results and outcomes could differ materially from those anticipated in these forward-looking statements as a result of various factors, including the factors set forth in Synchronoss' quarterly reports on Form 10-Q under the heading "Risk Factors". The words "strive," "objective," "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "vision," "would," and similar expressions are intended to

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identify forward-looking statements, although not all forward-looking statements contain these identifying words. Synchronoss has based these forward-looking statements on its current expectations and projections about future events. Although Synchronoss believes that the expectations underlying any of its forward-looking statements are reasonable, these expectations may prove to be incorrect and all of these statements are subject to risks and uncertainties. Should one or more of these risks and uncertainties materialize, or should underlying assumptions, projections, or expectations prove incorrect, actual results, performance, financial condition, or events may vary materially and adversely from those anticipated, estimated, or expected.

All forward-looking statements included in this Form 8-K are expressly qualified in their entirety by these cautionary statements. Synchronoss cautions readers not to place undue reliance on any forward-looking statement that speaks only as of the date made and to recognize that forward-looking statements are predictions of future results, which may not occur as anticipated. Actual results could differ materially from those anticipated in the forward-looking statements and from historical results, due to the uncertainties and factors described above, as well as others that Synchronoss may consider immaterial or does not anticipate at this time. Although Synchronoss believes that the expectations reflected in its forward-looking statements are reasonable, Synchronoss does not know whether its expectations may prove correct. Synchronoss' expectations reflected in its forward-looking statements can be affected by inaccurate assumptions it might make or by known or unknown uncertainties and factors, including those described above. The risks and uncertainties described above are not exclusive, and further information concerning Synchronoss and its business, including factors that potentially could materially affect its financial results or condition or relationships with customers and potential customers, may emerge from time to time. Synchronoss assumes no, and it specifically disclaims any, obligation to update, amend, or clarify forward-looking statements to reflect actual results or changes in factors or assumptions affecting such forward-looking statements. Synchronoss advises investors, however, to consult any further disclosures it makes on related subjects in our periodic reports that it files with or furnishes to the SEC.

#### Item 9.01 Financial Statements and Exhibits.

(d)	Exhibit Number	Description
	2.1*	Share Purchase Agreement by and among Synchronoss Technologies, Inc., Intralinks Holdings, Inc. and Impala Private Holdings II, LLC dated as of October 17, 2017.
	2.2*	Securities Purchase Agreement by and between Synchronoss Technologies, Inc. and Silver Private Holdings I, LLC dated as of October 17, 2017.
	3.1	Form of Certificate of Designations of the Series A Redeemable Convertible Preferred Stock.
	4.1	Form of Investor Rights Agreement by and between Synchronoss Technologies, Inc. and Silver Private Holdings I, LLC.
	99.1	Press Release of Synchronoss Technologies, Inc., dated October 17, 2017.

\*Pursuant to Item 601(b)(2) of Regulation S-K, promulgated under the Securities Act, certain schedules have been omitted and Synchronoss agrees to furnish supplementally to the SEC a copy of any omitted exhibits and schedules upon request.

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#### Exhibit Index

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\*Pursuant to Item 601(b)(2) of Regulation S-K, promulgated under the Securities Act, certain schedules have been omitted and Synchronoss agrees to furnish supplementally to the SEC a copy of any omitted exhibits and schedules upon request.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 19, 2017

**Synchronoss Technologies, Inc.**

By: /s/ Lawrence R. Irving

Name: Lawrence R. Irving

Title: Chief Financial Officer

**SHARE PURCHASE AGREEMENT**

**among**

**IMPALA PRIVATE HOLDINGS II, LLC**

**SYNCHRONOSS TECHNOLOGIES, INC.**

**and**

**INTRALINKS HOLDINGS, INC.**

**Dated as of October 17, 2017**

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## SHARE PURCHASE AGREEMENT

**SHARE PURCHASE AGREEMENT**, dated as of October 17, 2017 (this “**Agreement**”), among IMPALA PRIVATE HOLDINGS II, LLC, a Delaware limited liability company (“**Purchaser**”), SYNCHRONOSS TECHNOLOGIES, INC., a Delaware corporation (“**Seller**”), and INTRALINKS HOLDINGS, INC., a Delaware corporation and a wholly owned subsidiary of Seller (the “**Company**”).

## RECITALS

WHEREAS, Seller owns all of the issued and outstanding shares of common stock, par value \$0.001 per share, of the Company (“**Company Common Stock**”) (shares of Company Common Stock being hereinafter collectively referred to as “**Company Shares**”).

WHEREAS, the Company Common Stock represents all of the issued and outstanding capital stock of the Company.

WHEREAS, Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, all of the issued and outstanding Company Shares, upon the terms and conditions set forth in this Agreement (the “**Share Purchase**”).

WHEREAS, the boards of directors of Purchaser, Seller and the Company have determined that the Share Purchase is in the best interests of their respective companies and stockholders and have approved and declared advisable this Agreement and the Share Purchase.

WHEREAS, Purchaser, Seller and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Share Purchase and to prescribe various conditions to the Share Purchase.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Purchaser, Seller and the Company hereby agree as follows:

### 1. **Definitions.**

#### 1.1 **Definitions.** For purposes of this Agreement:

“**Acquisition Proposal**” means any direct or indirect sale, lease, exchange, license, transfer or other similar transaction disposing of all or a portion of the equity or assets of the Company or the Company Subsidiaries, other than in the ordinary course of business or as permitted pursuant to Article 6.

“**Action**” means any litigation, suit, claim, charge, action, demand, complaint, citation, summons, subpoena, audit, hearing, inquiry, proceeding, arbitration or mediation of any nature, whether at law or equity, by or before a Governmental Authority, arbitrator or mediator of competent jurisdiction.

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“**affiliate**” of a specified person means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person.

“**Antitrust Laws**” means any antitrust, competition or trade regulation Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, including, but not limited to, the HSR Act.

“**Assumed Liabilities**” shall mean the liabilities of the Company and the Company Subsidiaries to the extent directly related to the operations of the Company and the Company Subsidiaries in the ordinary course.

“**beneficial owner**” means a person who shall be deemed to be the beneficial owner as determined by Rule 13d-3 of the Exchange Act.

“**business day**” means a day except a Saturday, a Sunday or other day on which banks in the City of New York are authorized or required by Law to be closed.

“**Bylaws**” means the bylaws of the Company, as amended.

“**Certificate of Incorporation**” means the certificate of incorporation of the Company, as amended.

“**Closing Financial Certificate**” means a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, certifying the Company’s best reasonable estimate, made in good faith and with latest records available: (i) the amount of the Company Closing Cash; (ii) the amount of the Company Closing Debt; and (iii) the amount of the Company Closing Net Working Capital.

“**Closing Net Cash Shortfall**” means the amount, if any, expressed as a negative number, by which the Company Closing Cash as set forth in the Closing Financial Certificate is less than the Company Closing Debt as set forth in Closing Financial Certificate. Exhibit A-1 sets forth an illustrative calculation of Closing Net Cash Shortfall hereunder, and sets forth the principles by which such Closing Net Cash Shortfall was calculated.

“**Closing Net Cash Surplus**” means the amount, if any, expressed as a positive number, by which the Company Closing Cash as set forth in the Closing Financial Certificate exceeds the Company Closing Debt as set forth in the Closing Financial Certificate. Exhibit A-2 sets forth an illustrative calculation of Closing Net Cash Surplus hereunder, and sets forth the principles by which such Closing Net Cash Surplus was calculated.

“**Closing Net Working Capital Shortfall**” means the amount, if any, expressed as a negative number, by which the Company Closing Net Working Capital as set forth in Closing Financial Certificate is less than the Closing Net Working Capital Target; provided, however, that (i) if the Closing Net Working Capital Shortfall is less than or equal to (\$1,000,000), then for all purposes of this Agreement, the Closing Net Working Capital Shortfall shall be deemed to be zero and (ii) if the Closing Net Working Capital Shortfall is greater than (\$1,000,000) (i.e., a

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more negative number), then for all purposes of this Agreement, only the excess amount beyond (\$1,000,000) will be counted as the Closing Net Working Capital Shortfall. Exhibit A-3 sets forth an illustrative calculation of Closing Net Working Capital Shortfall hereunder, and sets forth the principles by which such Closing Net Working Capital Shortfall was calculated.

“**Closing Net Working Capital Surplus**” means the amount, if any, expressed as a positive number, by which the Company Closing Net Working Capital as set forth in the Closing Financial Certificate exceeds the Closing Net Working Capital Target; provided, however, that (i) if the Closing Net Working Capital Surplus is less than or equal to \$1,000,000, then for all purposes of this Agreement, the Closing Net Working Capital Surplus shall be deemed to be zero and (ii) if the Closing Net Working Capital Surplus is greater than \$1,000,000 (i.e., a more positive number), then for all purposes of this Agreement, only the excess amount beyond \$1,000,000 will be counted as the Closing Net Working Capital Surplus. Exhibit A-4 sets forth an illustrative calculation of Closing Net Working Capital Surplus hereunder, and sets forth the principles by which such Closing Net Working Capital Surplus was calculated.

“**Closing Net Working Capital Target**” means negative \$15,131,000.

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

“**Company Closing Cash**” means, as of immediately prior to Closing, the Company’s and the Company Subsidiaries’ cash and cash equivalents (excluding Restricted Cash), marketable securities and the amounts of any received but uncleared checks, drafts and wires, as defined by and determined in accordance with GAAP and determined in a manner consistent with prior practice of the Company, but without giving effect to the transaction contemplated hereby.

“**Company Closing Debt**” means, immediately prior to Closing, the Company’s and the Company Subsidiaries’ Debt. For clarity, Company Closing Debt will exclude any Debt incurred by the Company and Company Subsidiaries as a result of the Debt Financing.

“**Company Closing Net Working Capital**” means (i) the Company’s consolidated total current assets immediately prior to Closing (as defined by and determined in accordance with GAAP and, to the extent the Company’s Balance Sheet and past practice is consistent with GAAP, as GAAP is applied in the Company Balance Sheet and consistent with past practice, but without giving effect to the transaction contemplated hereby) less (ii) the Company’s consolidated total current liabilities immediately prior to Closing (as defined by and determined in accordance with GAAP and, to the extent the Company’s Balance Sheet and past practice is consistent with GAAP, as GAAP is applied in the Company Balance Sheet and consistent with past practice, but without giving effect to the transaction contemplated hereby). For purposes of calculating the Company Closing Net Working Capital, (i) the Company’s current assets shall exclude all Company Closing Cash and Restricted Cash, intercompany receivables, interest receivable, deferred financing costs, security deposits, non-operating receivables, income taxes receivable, and deferred income tax assets, and (ii) the Company’s current liabilities shall (A) include Seller Taxes and (B) reflect adjustments for the deferred revenue writedown, and (C) exclude all Company Closing Debt, intercompany payables, accrued income taxes, and deferred

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income tax liabilities. Exhibit B sets forth an illustrative calculation of Company Closing Net Working Capital.

“**Company Intellectual Property**” means any and all Intellectual Property and Intellectual Property Rights that are owned by (solely or jointly) or licensed to the Company or any Company Subsidiary, or that the Company or any Company Subsidiary otherwise has the right to use (or that the Company or any Company Subsidiary claims or purports to own or have a license with respect to or otherwise have a right to use).

“**Company Software**” means Software in the Owned Company Intellectual Property.

“**Compliant**” means, with respect to Required Information, such Required Information, when taken as a whole, does not or will not, in each case, with respect to the Company and Company Subsidiaries, when furnished, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such Required Information not misleading in light of the circumstances in which made.

“**Continuing Employees**” means (i) all employees (a) of the Company or any Company Subsidiary who at the Closing, continue their employment at the Company or any Company Subsidiary and (b) who are primarily engaged in providing services to the Company or any Company Subsidiary, and (ii) otherwise any employee who Seller and Purchaser mutually agree should be transferred pursuant to the Services Agreement.

“**Contract**” means any oral or written legally binding contract, subcontract, agreement, indenture, deed of trust, license, sublicense, note, bond, loan instrument, mortgage, lease, purchase or sales order, concession, franchise, option, insurance policy, benefit plan, guarantee and any similar legally binding arrangement, undertaking, commitment or pledge.

“**control**” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, partnership interests or other ownership interests, as trustee or executor, by contract or credit arrangement or otherwise.

“**Copyrights**” means any and all U.S. and foreign copyright rights, rights in mask works, and all other rights with respect to Works of Authorship and all registrations thereof and applications therefor (including moral and economic rights, however denominated).

“**Debt**” means, with respect to any person, the aggregate of the following: (i) any obligation of such person (A) for borrowed money (including the current portion thereof), (B) under or relating to a letter of credit, bankers’ acceptance, note purchase facility, cash overdraft line, credit card line or the like (to the extent drawn) including intercompany debt (other than solely among the Company and Company Subsidiaries), (C) evidenced by a bond, note, debenture or similar instrument (including a purchase money obligation), (D) for the deferred purchase price of property or services including any earn-out, (E) under any capitalized or synthetic leases or (F) required to settle (as of the applicable time of determination) any hedging, swap or similar arrangements, (G) accrued severance payments or payments in respect of any benefit provided as part of a severance package, award agreement or similar arrangement,

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(H) accrued annual or merit-based bonus payments, (I) accrued retention bonuses payable in respect of any benefit provided as part of a retention package, award agreement or similar arrangement (all of which arrangements are set forth on Section 3.11(c) of the Disclosure Schedule), (J) accrued partner

commissions (salary, travel and entertainment and rent only); and (ii) any liability described in clause (i) of other persons to the extent guaranteed by such first person, or recourse to such first person or any of its assets, or that is otherwise the legal liability of such first person. Debt includes (without duplication) (1) any and all accrued interest, success fees, prepayment premiums, make whole premiums or penalties and fees or expenses actually incurred (including attorneys' fees) associated with the prepayment of any Debt and (2) any and all amounts of the nature described in clauses (i)(A)-(J) owed by such person to any of its affiliates. For clarity, (i) with respect to the Company and Company Subsidiaries, Debt excludes trade payables and other similar liabilities incurred in the ordinary course of business consistent with past practice and (ii) the accruals contemplated by clauses (i)(H)-(I) (which, with respect to accruals contemplated by clause (H), will be accrued at target on a straight-line basis), will be on a proportionate basis up to immediately prior to the Closing (e.g., if a particular retention bonus vests over 24 months beginning on January 1, 2017 and the Closing Date is October 31, 2017, the accrual would be for 10/24ths of the bonus amount).

**"Debt Marketing Documents"** means customary bank books and syndication documents and materials, including confidential information memoranda, lender presentations, rating agency materials and presentations, and similar documents and materials required in connection with the Debt Financing, including the marketing and syndication thereof.

**"Environmental Laws"** means any Law relating to (i) releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances, including the exposure of any individual to Hazardous Substances; (ii) the manufacture, handling, transport, transfer, use, recycling, treatment, storage, investigation, removal, remediation, exposure of others to, distribution or disposal of Hazardous Substances or materials containing Hazardous Substances; (iii) pollution, regulation or protection of the indoor or outdoor environment or natural resources or human health and safety as it relates to environmental protection, including, without limitation, CERCLA, 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Hazardous Materials Transportation Act, §§ 49 U.S.C. App. 1801 *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.* and their state and local counterparts; or (iv) any Laws governing or applicable to any product content including, without limitation, the European Union Directives 2002/96/EC (Waste Electrical and Electronic Equipment Directive) and 2002/95/EC (Restriction on the Use of Hazardous Substances).

**"ERISA Affiliate"** means any person that, together with the Company or any Company Subsidiary, would be deemed a "single employer" within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

**"Exchange Act"** means the Securities and Exchange Act of 1934, as amended.

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**"Excluded Liabilities"** means those liabilities of Seller and its subsidiaries and affiliates set forth on Section 1.1(a) of the Disclosure Schedule. Excluded Liabilities will be deemed to include any Transaction Expenses of the Seller and its subsidiaries or affiliates payable pursuant to Section 7.16 that have not been paid at Closing.

**"Expense Reimbursement"** means the documented out-of-pocket fees and expenses incurred by Purchaser, Siris Capital Group, LLC and their respective affiliates on or before the date upon which Purchaser terminates this Agreement in accordance with Section 9.1(f), in connection with the execution of this Agreement, the Share Purchase and any other Transactions, but not to exceed \$5,000,000 in any event.

**"Final Closing Cash"** means the Company Closing Cash as finally determined pursuant to Section 2.3(b), Section 2.3(d) and/or Section 2.3(e).

**"Final Closing Debt"** means the Company Closing Debt as finally determined pursuant to Section 2.3(b), Section 2.3(d) and/or Section 2.3(e).

**"Final Net Cash Shortfall"** means the amount, if any, expressed as a negative number, by which the Final Closing Cash is less than the Final Closing Debt.

**"Final Net Cash Surplus"** means the amount, if any, expressed as a positive number, by which the Final Closing Cash exceeds the Final Closing Debt.

**"Final Net Working Capital"** means the Company Closing Net Working Capital as finally determined pursuant to Section 2.3(b), Section 2.3(d) and/or Section 2.3(e).

**"Final Net Working Capital Shortfall"** means the amount, if any, expressed as a negative number, by which the Final Net Working Capital is less than the Closing Net Working Capital Target; provided, however, that (i) if the Final Net Working Capital Shortfall is less than or equal to (\$1,000,000), then for all purposes of this Agreement, the Final Net Working Capital Shortfall shall be deemed to be zero and (ii) if the Final Net Working Capital Shortfall is greater than (\$1,000,000) (i.e., a more negative number), then for all purposes of this Agreement, only the excess amount beyond (\$1,000,000) will be counted as the Final Net Working Capital Shortfall.

**"Final Net Working Capital Surplus"** means the amount, if any, expressed as a positive number, by which the Final Net Working Capital exceeds the Closing Net Working Capital Target; provided, however, that (i) if the Final Net Working Capital Surplus is less than or equal to \$1,000,000, then for all purposes of this Agreement, the Final Net Working Capital Surplus shall be deemed to be zero and (ii) if the Final Net Working Capital Surplus is greater than \$1,000,000 (i.e., a more positive number), then for all purposes of this Agreement, only the excess amount beyond \$1,000,000 will be counted as the Final Net Working Capital Surplus.

**"Governmental Authority"** means any (i) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official,

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representative, organization, unit, body or entity and any court, arbitral body or other tribunal); or (iv) organization, entity or body or individual exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature (including stock exchanges).

**“Hazardous Substances”** means (i) those substances defined in or regulated as hazardous or toxic substances, materials or wastes under any Environmental Law; (ii) petroleum and petroleum products, including crude oil and any fractions thereof; (iii) natural gas, synthetic gas, and any mixtures thereof; (iv) polychlorinated biphenyls, asbestos and radon; (v) any other contaminant; and (vi) any biological or chemical substance, material or waste regulated or classified as hazardous, toxic, or radioactive by any Governmental Authority of competent jurisdiction pursuant to any Environmental Law; provided, that Hazardous Substances shall not include office and janitorial supplies that are safely maintained.

**“Intellectual Property”** means any and all (i) formulae, algorithms, procedures, processes, methods, techniques, know-how, ideas, creations, inventions, discoveries, and improvements (whether patentable or unpatentable and whether or not reduced to practice); (ii) Software, websites, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, designs, mask works, and other works of authorship and copyrightable subject matter (**“Works of Authorship”**); (iii) databases and other compilations and collections of data or information (**“Databases”**); (iv) trademarks, trade names, service marks, service names, logos and design marks, trade dress, fictitious and other business names, brand names, collective membership marks, certification marks, slogans and other forms of indicia of origin, whether or not registrable as a trademark in any given jurisdiction, together with all goodwill associated with any of the foregoing (**“Trademarks”**); (v) domain names, uniform resource locators and other names and locators associated with the Internet (**“Domain Names”**); and (vi) confidential and proprietary information and other intangible materials not generally known to the public that that derive independent economic value from not being generally known or readily ascertainable (to the extent maintained as a trade secret or otherwise qualifying as a trade secret under applicable Law), including (A) any technical, engineering, manufacturing, product, marketing, servicing, financial, supplier, and other information and other intangible materials; (B) customer, vendor, and distributor lists, contact and registration information, and correspondence; and (C) any models, processes, procedures, drawings, component lists, plans, proposals, technical data, and formulae, algorithms, procedures, processes, methods, techniques, know-how, ideas, creations, inventions, invention disclosures inventor rights, discoveries, improvements (whether or not patentable and whether or not reduced to practice) (**“Trade Secrets”**).

**“Intellectual Property Rights”** means any and all rights recognized by any Governmental Authority anywhere in the world in the Intellectual Property, including (i) Patents; (ii) Copyrights; (iii) industrial design rights and registrations thereof and applications therefor; (iv) rights with respect to Trademarks, and all registrations thereof and applications therefor; (v) rights with respect to Domain Names, including registrations thereof and applications therefor; (vi) rights with respect to Trade Secrets, including rights to limit the use or disclosure thereof by any person; (vii) rights with respect to Databases, including registrations thereof and applications therefor; (viii) all claims and causes of action arising out of or related to any past,

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current or future infringement, misappropriation, interference or violation of any of the foregoing; and (ix) any rights equivalent or similar to any of the foregoing.

**“Initial Invested Equity”** shall mean \$440,000,000.

**“knowledge of the Company”** means the knowledge of each of Ronald Prague, Stephen Waldis, Bob Garcia, Lawrence Irving, Pat Doran, Leif O’Leary and Daniel Rizer, including in each case the knowledge that such person would have obtained in the reasonable conduct of his or her duties after familiarizing himself or herself with the representations and warranties of the Company contained in Article 3 of this Agreement and after reasonable inquiry of his or her direct reports with operational responsibility for the matter in question. With respect to Intellectual Property and Intellectual Property Rights, the “reasonable conduct of his or her duties” does not require the Company or any of the individuals named in the previous sentence to conduct, have conducted, obtain, or have obtained any freedom-to-operate opinions or similar opinions of counsel or any clearance searches, and no knowledge of any third-party Intellectual Property Rights that would have been revealed by such inquiries, opinions, or searches will be imputed to the Company or any such individual.

**“License Contract”** means any Contract: (i) pursuant to which the Company and the Company Subsidiaries obtained the right to use or practice rights under third-party Intellectual Property Rights that are used primarily in and are material to the conduct of the Company’s business as conducted on the date hereof, (ii) by which the Company or any Company Subsidiary has licensed or otherwise authorized a Third Party to use any Owned Company Intellectual Property, (iii) otherwise granting or restricting the right to use Company Intellectual Property and (iv) transferring, assigning or indemnifying with respect to the Company Intellectual Property, including, in each case, license agreements, settlement agreements and covenants not to sue; provided, “License Contracts” shall not include non-exclusive licenses granted to third parties in the ordinary course of business, Contracts substantially in the form of the Company’s or any Company Subsidiary’s standard agreements, Contracts with suppliers, distributors or customers entered into in the ordinary course of business or as otherwise contemplated by this Agreement and “shrink wrap,” “commercially available off the shelf software package” or “click through” licenses.

**“Lien”** means any liens, mortgages, encumbrances, pledges, security interests, options, rights of first refusal, or other charges of any kind or nature whatsoever. For clarity, a non-exclusive license to Intellectual Property or Intellectual Property Rights shall not be considered a Lien hereunder.

**“Lenders”** shall mean the persons (other than the Company or any Company Subsidiary) that have committed to provide or arrange or have otherwise entered into agreements (including the Debt Commitment Letter), in each case, in connection with the Debt Financing in connection with the transactions contemplated hereby, and any joinder agreements or credit agreements entered into pursuant thereto; it being understood that Purchaser shall not be a Lender for any purposes hereunder.

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**“Lender Related Parties”** means the Lenders, together with their respective affiliates, and the respective officers, directors, employees, partners, trustees, shareholders, controlling persons, agents and representatives of the foregoing, and their respective successors and assigns.

**“Liquidity Event”** shall mean, following the Closing Date, receipt by Purchaser of net cash proceeds from any sale of equity or assets of the Company, or a dividend or distribution to Purchaser in respect of the Company Shares. In the event that Purchaser receives a dividend or distribution of, or

the Company Shares are converted into or exchanged for, property other than cash, the Liquidity Event shall occur at such time as such property is converted into cash.

**“Marketing Period”** shall mean the first period of 15 consecutive business days after the date of this Agreement throughout which and at the end of which Seller has provided to Purchaser the Required Information (which shall be the same information throughout the period) and such Required Information is Compliant; provided that (A) November 24, 2017 shall not be included as a business day for such purpose and (B) if such period has not ended on or prior to December 18, 2017, then it will commence on or after January 2, 2018; provided, however, that the Marketing Period shall not be deemed to have been completed prior to November 13, 2017. If Seller in good faith reasonably believes that it has provided the Required Information and that the Required Information is Compliant, it may deliver to Purchaser a written notice stating when it believes that it completed such delivery, in which case the Marketing Period shall be deemed to have commenced as of the date of delivery of such written notice unless Purchaser in good faith reasonably believes that Seller has not completed delivery of the Required Information that is Compliant and, within three (3) business days after the delivery of such notice by Seller, delivers a written notice to Seller to that effect, stating with specificity any elements of noncompliance and/or nonsatisfaction.

**“Material Adverse Effect”** means any result, event, occurrence, condition, circumstance, development, state of facts, change, effect (each an **“Effect”**), that has had, or that would reasonably be expected to have, individually or when taken together with all other Effects, (a) a material adverse effect on the business, condition (financial or otherwise), assets (including intangible assets), liabilities or results of operations of the Company and the Company Subsidiaries, taken as a whole or (b) would reasonably be expected to materially impair the performance by Seller or the Company or its Subsidiaries of their respective obligations hereunder or the consummation of the transactions contemplated by this Agreement; provided, that none of the following Effects shall be deemed either alone or in combination to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (i) changes in the industry in which the Company operates; (ii) changes in the general economic or business conditions within the U.S. or other jurisdictions in which the Company has operations; (iii) general changes in the economy or securities, credit, financial or other capital markets of the U.S. or any other region outside of the U.S. in which the Company operates (including changes generally in prevailing interest rates, currency exchange rates, credit markets and price levels or trading volumes); (iv) earthquakes, fires, floods, hurricanes, tornadoes or similar catastrophes, or acts of terrorism, war, sabotage, national or international calamity, military action or any other similar event or any change, escalation or worsening thereof after the date hereof; (v) any change in GAAP or any change in Laws (or interpretation or enforcement thereof) applicable to the operation of the business of the Company and the Company Subsidiaries; (vi) any Effect, including loss of customers, suppliers, vendors,

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venue partners, business partners or employees of the Company and the Company Subsidiaries, as a result of the announcement or pendency of the Transactions; (vii) any failure to meet internal or published projections, forecasts or revenue or earning predictions for any period; provided that the underlying causes of such decline, change or failure, may be considered in determining whether there was a Material Adverse Effect; (viii) any actions taken, or failure to take any action, in each case, to which Purchaser has expressly given written approval or consent or that is affirmatively required by this Agreement; (ix) the identity of Purchaser or its affiliates; and (x) any failure to obtain the consent, waiver, approval or authorization of any Third Party or Governmental Authority in connection with the Share Purchase; provided that an Effect described in any of the foregoing clauses (i)-(iii) and (v) may be taken into account to the extent the Company and the Company Subsidiaries are disproportionately affected thereby relative to other peers of the Company and the Company Subsidiaries in the industries in which the Company and the Company Subsidiaries operate.

**“Open Source”** means Software that is generally made available in source code form and that is distributed as “free software,” “open source software” or under similar licensing or distribution terms (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL), the Apache License and any license identified as an open source license by the Open Source Initiative ([www.opensource.org](http://www.opensource.org))).

**“Owned Company Intellectual Property”** means any and all Intellectual Property and Intellectual Property Rights that are owned by (solely or jointly) the Company or any Company Subsidiary (or that Company or any Company Subsidiary claims or purports to own), including all Registered Company Intellectual Property set forth on Section 3.14(a) of the Disclosure Schedule.

**“Patents”** means any and all U.S. and foreign patent rights, including without limitation, rights in all (i) patents; (ii) pending patent applications, including all provisional applications, substitutions, continuations, continuations-in-part, divisions, renewals, and all patents granted thereon; (iii) patents-of-addition, reissues, reexaminations, confirmations, re-registrations, invalidations, and extensions or restorations by existing or future extension or restoration mechanisms, including supplementary protection certificates or the equivalent thereof; and (iv) foreign counterparts of any of the foregoing.

**“Permitted Liens”** means (i) Liens for Taxes that are not due and payable or, if due, are being contested in good faith by appropriate proceedings; (ii) Liens arising by operation of Law in favor of mechanics, carriers, workmen, warehousemen or repairmen, incurred in the ordinary course of business securing amount that are not yet due and payable or are being contested in good faith by appropriate proceedings; (iii) any obligations in respect of letters of credit and performance and construction bonds issued in the ordinary course of business consistent with past practice; (iv) zoning, building and other similar charges or encumbrances or irregularities in title that, in each case, only affect real property and that would not reasonably be expected to, individually or in the aggregate, materially impair the value of the subject asset for the purposes for which it is used in connection with the business or operations of the Company and the Company Subsidiaries or materially interfere with the use or occupancy thereof in connection

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therewith; and (v) non-exclusive licenses granted in the ordinary course of business consistent with past practice that would not reasonably be expected to, individually or in the aggregate, materially impair the continued use and operation of the assets to which they relate in the business of the Company and the Company Subsidiaries as presently conducted.

**“person”** means an individual, corporation, partnership, limited partnership, limited liability company, syndicate, person, trust, association, enterprise, society, estate, firm, joint venture, organization, entity or Governmental Authority.

**“Prior Closing Date”** means January 19, 2017 (the closing date under the Prior Merger Agreement).

“**Prior Merger Agreement**” means that certain Agreement and Plan of Merger dated as of December 5, 2016, by and among Seller, GL Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Seller, and the Company.

“**Prior Reporting Period**” means the period of time commencing with the closing of the initial public offering of the Company and ending with the closing of the acquisition of the Company by Seller, during which the Company was subject to the periodic reporting requirements of Section 13(a) of the Exchange Act.

“**Purchaser Termination Fee**” means an amount equal to \$48,863,619.70.

“**Registered Company Intellectual Property**” means all Patents, registered Trademarks, applications to register Trademarks, registered Copyrights, applications to register Copyrights, and Domain Names included in the Owned Company Intellectual Property that are currently registered, recorded, or filed by, for, or in the name of Company or any Company Subsidiary.

“**Representative**” means the directors, officers, employees, agents (including financial and legal advisors) and other advisors and representatives of a person.

“**Restricted Cash**” means all cash that is not freely useable by Purchaser because it is subject to restrictions or limitations on use or distribution by Law, Contract or otherwise, or Taxes imposed on distributions thereof.

“**SEC**” means the Securities and Exchange Commission, or any successor thereto.

“**Seller Taxes**” means any liabilities or obligations for any (i) Taxes imposed on or with respect to the Company or any of the Company Subsidiaries for (A) any Pre-Closing Tax Period or (B) the pre-closing portion of any Straddle Period (determined in accordance with Section 7.11(b)); (ii) Taxes arising or resulting from a breach of any representation or warranty contained in Section 3.15 (without regard to any qualification thereof or disclosed exception thereto); (iii) Taxes for which Seller is liable under Section 7.11(a); and (iv) Taxes of any other person (other than the Company or any of the Company Subsidiaries) for which the Company or any of the Company Subsidiaries is liable (A) by reason of being included in any fiscal unity or consolidated, affiliated, combined or unitary group at any time on or before the Closing Date, pursuant to Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law), (B) as a transferee or successor of such person on or prior to the Closing Date or

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(C) pursuant to any Tax allocation, indemnity or sharing agreement entered into on or before the Closing Date (other than (x) any such agreement solely among the Company and the Company Subsidiaries and (y) any indemnification provisions for Taxes contained in credit agreements, leases or other commercial agreements the primary purposes of which do not relate to Taxes.

“**Shared Contract**” means all Contracts of the Seller and its subsidiaries or affiliates (other than the Company and the Company Subsidiaries) relating in part, but not exclusively, to the Company and the Company Subsidiaries, including Contracts listed or described in Section 7.18 of the Disclosure Schedules.

“**Software**” means all (i) computer programs and other software, including software implementations of algorithms, models, and methodologies, whether in source code, object code or other form, including libraries, subroutines and other components thereof; (ii) screens, user interfaces, command structures, report formats, templates, menus, buttons and icons; (iii) descriptions, flow-charts, architectures, development tools, and other materials used to design, plan, organize and develop any of the foregoing; and (iv) all documentation, including development, diagnostic, support, user and training documentation related to any of the foregoing.

“**Sponsors**” mean Siris Partners III, L.P. and Siris Partners III Parallel, L.P.

“**Systems**” means all the computer, information technology and data processing systems, facilities and services used by the Company and Company Subsidiaries, including all hardware, networks, communications facilities, platforms and related systems and services in the custody or control of the Company and Company Subsidiaries.

“**subsidiary**” or “**subsidiaries**” means, when used with reference to a party, any corporation or other organization, whether incorporated or unincorporated, of which such party or any other subsidiary of such party is a general partner (excluding partnerships the general partnership interests of which held by such party or any subsidiary of such party do not have a majority of the voting interests in such partnership) or serves in a similar capacity, or, with respect to such corporation or other organization, 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 is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

“**Support Assets**” shall mean immaterial, non-essential assets, such as paper pads, toner and ink cartridges for printers or photocopiers, writing instruments (such as pens, pencils, highlighters and erasers), binding or fastening devices (such as staplers and staples, velobinders and three-ring binders, paper clips and glue), cleaning supplies, bathroom supplies, kitchen supplies, kitchen utensils and kitchen small appliances and other tangible supplies, that are not significant to the running of the Company and the Company Subsidiaries in the ordinary course of business and (ii) “shrink wrap,” “commercially available off the shelf software package,” “click through” and other similar non-exclusive licenses (and maintenance and support services for the foregoing) with an aggregate cost less than \$100,000 per year in the aggregate.

“**Tax**” or “**Taxes**” means all U.S. federal, state, local, non-U.S. and other net income, gross income, gross receipts, value-added, sales, use, ad valorem, customs duties, capital stock,

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environmental (including taxes under Section 59A of the Code), transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, registration, severance, stamp, occupation, premium, real property, personal property, windfall profits, customs, duties, alternative or add-on minimum, estimated, or other taxes, fees, assessments or charges in the nature of a tax, together with any interest, any penalties or additions to tax

with respect thereto, whether disputed or not, including any fees or penalties imposed on a person in respect of any information Tax Return made to a Governmental Authority of competent jurisdiction.

“**Tax Authority**” means any Governmental Authority responsible for the imposition, administration, assessment, and/or collection of any Tax.

“**Tax Returns**” means all returns and reports, elections, declarations, disclosures, schedules, estimates and information returns, including any schedule or attachment thereto, supplied or required to be supplied to a Governmental Authority of competent jurisdiction (or any agent thereof) relating to Taxes.

“**Third Party**” means any person other than Purchaser and its subsidiaries and the respective Representatives of Purchaser and its subsidiaries.

“**Total Share Purchase Consideration**” means (i) \$977,272,394, *plus* (ii) the Closing Net Cash Surplus (if any), *plus* (iii) the Closing Net Cash Shortfall (if any) (expressed as a negative number), *plus* (iv) the Closing Net Working Capital Surplus (if any), *plus* (v) the Closing Net Working Capital Shortfall (if any) (expressed as a negative number).

“**Transaction Tax Deductions**” means any item of loss or deduction resulting from or attributable to Transaction Expenses.

“**U.S.**” means United States of America.

“**Willful and Material Breach**” means a material breach that is a consequence of a deliberate act undertaken by the breaching party or the deliberate failure by the breaching party to take an act it is required to take under this Agreement, with knowledge that the taking of or failure to take such act would, or would reasonably be expected to, cause a breach of this Agreement.

The following terms have the meaning set forth in the Sections set forth below:

Defined Term	Location of Definition
Agreement	Preamble
Alternative Financing	7.9(c)
Annual Financial Statements	3.8(b)
Books and Records	7.12(a)
Bribery Act	3.22(a)
Business Guarantees	7.14
Cap	10.3(b)
Claim	10.4(a)

Defined Term	Location of Definition
Claims Period	10.4(b)
Closing	2.1
Closing Date	2.1
Commitment Letters	5.4(b)
Company	Preamble
Company Balance Sheet	3.8(c)
Company Benefit Plans	3.11(a)
Company Common Stock	Recitals
Company Fundamental Representations	8.2(a)
Company Leased Real Property	3.13(b)
Company Guarantees	7.14(a)
Company Material Contracts	3.17(a)
Company Products	3.14(p)
Company Securities	3.3(c)
Company Shares	Recitals
Company Subsidiary	3.1(b)
Confidentiality Agreement	7.1(b)
Contested Claim	10.6(b)
Contingent Consideration	2.5(a)
Customer Contracts	3.19
Damages	10.2(a)
Databases	1.1
De Minimis Threshold	10.3(a)
Debt Commitment Letter	5.4(b)
Debt Fee Letter	5.4(c)
Debt Financing	5.4(b)
Deductible	10.3(a)
Delaware Courts	11.6(b)
Disclosure Cap	10.3(b)
Disclosure Condition	8.2(h)
Disclosure Schedule	Article 3
Domain Names	1.1
EEOC	3.12(b)
Effect	1.1
Equity Commitment Letter	5.4(b)
Equity Financing	5.4(b)



ERISA	3.11(a)
FCPA	3.22(a)
Final Balance	2.3(f)
Final Negative Amount	2.3(g)
Final Positive Amount	2.3(g)
Financial Statements	3.8(b)
Financing	5.4(b)
Financing Agreements	7.9(a)(ii)
Fundamental Representation Cap	10.3(b)

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<b>Defined Term</b>	<b>Location of Definition</b>
GAAP	3.8(b)
Government Official	3.22(b)
HSR Act	3.5(b)
Interim Financial Statements	3.8(b)
IRS	3.11(a)
Law	3.5(a)
Limited Guarantee	5.6
Multiemployer Plan	3.11(b)
Multiple Employer Plan	3.11(b)
New Commitment Letter	7.9(c)
Non-Party Affiliate	11.12
Notice of Claim	10.4(a)
Notice of Objection	2.3(b)
Order	8.1(a)
Outside Date	9.1(b)(i)
Permits	3.7
Pre-Closing Tax Period	7.11(c)
Pre-Closing Tax Returns	7.11(c)
Purchase Price Calculations	2.3(b)
Purchaser	Preamble
Purchaser Adjustment Notice	2.3(b)
Purchaser Indemnifiable Matters	10.2(b)
Purchaser Indemnified Person	10.2(a)
Purchaser Indemnified Persons	10.2(a)
Purchaser Plans	7.3(d)
Purchaser Related Parties	9.3(d)
Required Information	7.10(a)(i)
Reviewing Accountant	2.3(e)
Sanctions Laws	3.23
SEC Reports	3.8(a)
Securities Act	3.8(a)
Seller	Preamble
Seller Credit Agreement	7.10(d)
Seller Fundamental Representations	10.1(a)
Seller Indemnifiable Matters	10.2(a)
Seller Indemnified Person	10.2(b)
Seller Indemnified Persons	10.2(b)
Seller Related Parties	9.3(d)
Share Purchase	Recitals
Shared Services	7.15
SOX	3.8(a)
Sufficiency Cap	10.3(b)
Straddle Period	7.11(b)
Straddle Period Tax	7.11(b)
Straddle Period Tax Returns	7.11(d)

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<b>Defined Term</b>	<b>Location of Definition</b>
Tax Benefit	10.3(f)
Tax Cost	10.3(f)
Tax Proceeding	7.11(e)
Third Party Claim	10.4(a)
Trade Secrets	1.1
Trademarks	1.1
Transactions	3.4
Transaction Expenses	7.16
Transfer Taxes	7.11(a)
US Benefit Plans	3.11(a)

## 2. The Share Purchase.

2.1 **Closing.** Upon the terms and conditions set forth herein, the closing of the Share Purchase (the “**Closing**”) will take place (a) at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, at One Marina Park Drive, Suite 900, Boston, Massachusetts, at 10:00 a.m. (local time) as soon as reasonably practicable (but no later than two (2) business days) following the satisfaction or (to the extent permitted by applicable Law) waiver of the conditions set forth in Article 8 (excluding conditions that, by their terms, are to be satisfied or (to the extent permitted by applicable Law) waived on the Closing Date, but subject to the satisfaction or (to the extent permitted by applicable Law) waiver of such conditions on the Closing Date); provided, however, that if the Marketing Period has not ended at least three (3) business days prior to the date on which the Closing would otherwise occur, the Closing shall instead occur on the earlier to occur of (i) a business day during the Marketing Period specified by Purchaser on no fewer than three (3) business days written notice to Seller (it being understood that such date may be conditioned on the simultaneous completion of the Financing) and (ii) the second (2<sup>nd</sup>) business day following the final day of the Marketing Period (subject, in the case of each of the foregoing clauses (i) and (ii), to the satisfaction or (to the extent permitted by applicable Law) waiver of all of the conditions set forth in Article 8 (excluding conditions that, by their terms, are to be satisfied or (to the extent permitted by applicable Law) waived on the Closing Date, but subject to the satisfaction or (to the extent permitted by applicable Law) waiver of such conditions on the Closing Date) as of the date determined pursuant to this proviso); or (b) at such other time, date or place as agreed to in writing by Purchaser and Seller. The date on which the Closing occurs is referred to in this Agreement as the “**Closing Date.**”

2.2 **Purchase and Sale of Company Shares.** At the Closing, upon the terms and subject to the conditions contained herein, (a) Seller will sell, convey, transfer, assign and deliver to Purchaser, and Purchaser will purchase and acquire from Seller, all of the issued and outstanding Company Shares, free and clear of all Liens, and (b) as full and complete consideration for the sale and transfer of all of the issued and outstanding Company Shares, Purchaser shall pay (or cause to be paid) to Seller the Total Share Purchase Consideration, paid by wire transfer of immediately available funds to the bank account designated in writing by Seller to Purchaser. Immediately following the Closing, Seller will pay

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\$5 million to Purchaser as partial reimbursement of the out-of-pocket fees and expenses incurred by Purchaser, Siris Capital Group, LLC and their respective affiliates in connection with the execution of this Agreement, the Share Purchase and any other Transactions.

### 2.3 **Net Cash Adjustment and Net Working Capital Adjustment.**

(a) The Company shall deliver the Closing Financial Certificate to Purchaser not later than four (4) business days prior to the Closing Date. Following the delivery of the Closing Financial Certificate and until two (2) Business Days prior to the Closing Date, Purchaser shall have a reasonable opportunity to review and discuss with Seller the Closing Certificate. Seller will consider Purchaser’s comments in good faith and shall have the right, but not the obligation, to adjust the Closing Certificate as a result of such discussions.

(b) Within ninety (90) days after the Closing, Purchaser shall prepare and deliver to Seller a written notice (the “**Purchaser Adjustment Notice**”) setting forth Purchaser’s calculation of the Company Closing Cash, Company Closing Debt and Company Closing Net Working Capital (the “**Purchase Price Calculations**”), and the amount by which the Company Closing Cash, Company Closing Debt and Company Closing Net Working Capital as calculated by Purchaser is greater or less than the Company Closing Cash, Company Closing Debt and Company Closing Net Working Capital as set forth in the Closing Financial Certificate, in each case together with supporting documentation, information and calculations. Any matters not expressly set forth in the Notice of Objections shall be deemed to have been accepted by Seller. If, for any reason, Seller fails to deliver the Notice of Objection within the time period required by Section 2.3(c), the amounts set forth in the Purchase Price Calculations delivered by Purchaser to Seller shall be considered for all purposes of this Agreement as being the Final Closing Cash, Final Closing Debt and Final Net Working Capital.

(c) Seller may object to the calculation of the Company Closing Cash, Company Closing Debt or Company Closing Net Working Capital set forth in the Purchaser Adjustment Notice by providing written notice of such objection to Purchaser within thirty (30) days after Purchaser’ delivery of the Purchaser Adjustment Notice (the “**Notice of Objection**”), together with supporting documentation, information and calculations (including Seller’s calculation of the Company Closing Cash, Company Closing Debt and Company Closing Net Working Capital).

(d) If Seller timely provides the Notice of Objection, then Purchaser and Seller shall confer in good faith for a period of up to fifteen (15) business days following Purchaser’s timely receipt of the Notice of Objection in an attempt to resolve any disputed matter set forth in the Notice of Objection, and any resolution by them shall be in writing and shall be final and binding. Any such resolution shall be considered for all purposes of this Agreement as being the Final Closing Cash, Final Closing Debt and Final Net Working Capital.

(e) If, after the fifteen (15) business day period set forth in Section 2.3(d), Purchaser and Seller cannot resolve any matter set forth in the Notice of Objection, then Purchaser and Seller shall engage a nationally recognized auditing firm acceptable to both Purchaser and Seller, which firm shall, to the maximum extent reasonably

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practicable, be independent with respect to Purchaser and Seller (the “**Reviewing Accountant**”) to review only the matters in the Notice of Objection (including the supporting documentation, information and calculations) that are still disputed by Purchaser and Seller and the Purchase Price Calculations to the extent relevant thereto. After such review and a review of Seller’s relevant books and records, the Reviewing Accountant shall promptly (and in any event within sixty (60) days following its engagement) determine the resolution of such remaining disputed matters in accordance with the terms of this Agreement, and shall set forth such determination in reasonable detail in a written notice and deliver such notice to both parties, which determination shall be final and binding on the parties hereto (except in the case of fraud or manifest error). The Reviewing Accountant’s calculation of the Company Closing Cash, Company Closing Debt and Company Closing Net Working Capital shall be, with respect to any specific discrepancy or disagreement, no greater than the higher amount calculated by Purchaser or Seller, as the case may be, and no lower than the lower amount calculated by Purchaser or Seller, as the case may be (it being understood that the calculations of the Company Closing Cash, Company Closing Debt and Company Closing Net Working Capital set forth in the Purchaser Adjustment Notice and the Notice of Objection may not thereafter be varied by Purchaser or Seller, as applicable, in the dispute resolution process

involving the Reviewing Accountant). The Reviewing Accountant's calculation of the Company Closing Cash, Company Closing Debt and Company Closing Net Working Capital shall be considered for all purposes of this Agreement as being the Final Closing Cash, Final Closing Debt and Final Net Working Capital. The fees, costs and expenses of the Reviewing Accountant shall be borne by Purchaser, on the one hand, and by Seller, on the other, based upon the percentage which the portion of the contested amounts not awarded to each party bears to the total amounts contested by such party.

(f) The "**Final Balance**" means the sum of the following:

(i) if the Final Net Cash Shortfall or the Final Net Cash Surplus, as applicable, is less than the Closing Net Cash Shortfall or Closing Net Cash Surplus, as applicable, such difference (expressed as a negative number);

(ii) if the Final Net Cash Shortfall or Final Net Cash Surplus, as applicable, is greater than the Closing Net Cash Shortfall or Closing Net Cash Surplus, as applicable, such difference (expressed as a positive number);

(iii) if the Final Net Working Capital Shortfall or the Final Net Working Capital Surplus, as applicable, is less than the Closing Net Working Capital Shortfall or Closing Net Working Capital Surplus, as applicable, such difference (expressed as a negative number); and

(iv) if the Final Net Working Capital Shortfall or Final Net Working Capital Surplus, as applicable, is greater than the Closing Net Working Capital Shortfall or Closing Net Working Capital Surplus, as applicable, such difference (expressed as a positive number).

(g) If the Final Balance is a negative number (the "**Final Negative Amount**"), then Seller shall pay to Purchaser without any dispute by Seller, the full amount of the Final Negative Amount within two (2) Business Days from when the Final Balance is

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determined in accordance with the provisions of Section 2.3. If the Final Balance is a positive number (the "**Final Positive Amount**"), then Purchaser shall pay to Seller the Final Positive Amount within two (2) Business Days from when the Final Balance is determined in accordance with the provisions of Section 2.3. If either fails to pay in a timely manner the amounts due pursuant to this Section 2.3(g), that party shall pay interest on such amounts at the prime rate of Bank of America, N.A. in effect from time to time from the date such payment was required to be made hereunder. For purposes of the calculations in Section 2.3(f), in the case of comparing two negative numbers, "less than" shall result in a larger negative number.

(h) For clarity, the process set forth in this Section 2.3 shall be the exclusive remedy of Purchaser for disputes related to calculation of the Company Closing Cash, Company Closing Debt, Company Closing Net Working Capital, the Closing Financial Certificate, the Purchaser Adjustment Notice, the Notice of Objection and any amounts set forth therein, except in cases of fraud.

**2.4 Withholding Rights.** Purchaser shall be entitled to deduct and withhold from the amounts otherwise payable pursuant this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under the Code and the treasury regulations promulgated thereunder, or any provision of state, local or foreign Tax law. To the extent that amounts are so deducted and withheld, and timely paid over to the appropriate Government Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the person in respect of which such deduction and withholding was made.

### **2.5 Contingent Consideration.**

(a) Once Purchaser and its affiliates receive cash consideration from one or a series of Liquidity Events in excess of the Initial Invested Equity, Purchaser shall pay to Seller any such excess from such Liquidity Event or Liquidity Events or future Liquidity Events (the "**Contingent Consideration**"); provided that in no event shall the Contingent Consideration payable pursuant to this Section 2.5 be greater than twenty-five million dollars (\$25 million) in the aggregate, as may be reduced by 10.3(b). In the event of a Liquidity Event that is a business acquisition or combination transaction in which Company Shares are converted into publicly-traded securities, upon written request of Seller made on or following the date on which such securities are freely transferrable by Purchaser (or its affiliates), Purchaser will transfer to Seller, the Contingent Consideration then owed as a result of such Liquidity Event (if previously not paid) in the form of such securities in lieu of cash (valued by Purchaser by reference to the reported closing trading price on the date prior to such transfer), provided it is then legally and contractually permissible to do so in a private transfer that is unregistered under applicable securities laws.

(b) Purchaser and Seller agree to treat (and cause their respective affiliates to treat) any Contingent Consideration paid to Seller as an adjustment to the Total Share Purchase Consideration paid by Purchaser pursuant to this Agreement for all Tax purposes.

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## **3. Representations and Warranties of the Company.**

Except as disclosed in a document of even date herewith delivered by the Company to Purchaser prior to the execution and delivery of this Agreement and referring by section or sub-section number to the representations and warranties in this Agreement (the "**Disclosure Schedule**"), (provided that an item disclosed in any Section shall be deemed to have been disclosed for each other Section of this Agreement to the extent the relevance of such disclosure to such other section of this Agreement is reasonably apparent on the face of such disclosure) and except as disclosed in the reports, schedules, forms, statements and other documents filed by the Company with, or furnished by the Company to, the SEC and publicly available prior to the date of this Agreement (but excluding any risk factor disclosure under the heading "Risk Factors" and any disclosure of risks included or referenced in any "forward-looking statements" disclaimer, or any other disclosures included in any such report, schedule, form, statement or other document to the extent they are precatory, predictive or forward-looking in nature), the Seller and the Company hereby represent and warrant to Purchaser as follows:

### **3.1 Organization and Qualification; Company Subsidiaries.**

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the requisite corporate power and authority to own, lease and operate all of its properties and assets and to carry on its business

as it is now being conducted, except where such failure, individually or in the aggregate, would not have, or would not be reasonably likely to have, a Material Adverse Effect. The Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing, individually or in the aggregate, would not have a Material Adverse Effect.

(b) Section 3.1(b) of the Disclosure Schedule contains a complete and accurate list, as of the date of this Agreement, of the name and jurisdiction of organization of each subsidiary of the Company (each a “**Company Subsidiary**”). Each Company Subsidiary is duly organized, validly existing and, to the extent applicable, in good standing under the laws of the jurisdiction of its organization and has the requisite power and authority to own, lease and operate all of its properties and assets and to carry on its business as it is now being conducted, except where the failure, individually or in the aggregate, would not have, or would not be reasonably likely to have, a Material Adverse Effect.

(c) Except as set forth on Section 3.1(c) of the Disclosure Schedule, the Company does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, any corporation, partnership, joint venture or other business association or entity.

**3.2 Certificate of Incorporation and Bylaws.** The Company has heretofore made available to Purchaser a complete and correct copy of the Certificate of Incorporation and the Bylaws or equivalent organizational documents, each as

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amended to date, of the Company and each material Company Subsidiary. Such Certificate of Incorporation, Bylaws or equivalent organizational documents are in full force and effect. Neither the Company nor any Company Subsidiary is in violation of any of the provisions of its Certificate of Incorporation, Bylaws or equivalent organizational documents.

### **3.3 Capitalization.**

(a) The authorized capital stock of the Company consists solely of one thousand (1,000) Company Shares, all of which are issued and outstanding as of the date of this Agreement. All issued and outstanding Company Shares are held by Seller.

(b) All issued and outstanding Company Shares are validly issued, fully paid and non-assessable and are issued free of any preemptive rights created by the Certificate of Incorporation or Bylaws or any Contract to which the Company is a party.

(c) As of the date of this Agreement there are no outstanding (i) options, warrants or other rights, Contracts, arrangements or commitments of any character relating to the issued or unissued capital stock of the Company or any Company Subsidiary or obligating the Company or any Company Subsidiary to issue or sell any shares of capital stock of, or other equity interests in (or any securities convertible into or exchangeable for such equity interests), the Company or any Company Subsidiary, (ii) shares of capital stock of or other voting securities or ownership interests in the Company or any Company Subsidiary or (iii) restricted shares, restricted share units, stock appreciation rights, performance shares, contingent value rights, “phantom” stock or similar securities or rights that are derivative of or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities (including any bonds, debentures, notes or other indebtedness having voting rights or convertible into or exchangeable for securities having voting rights) or ownership interests in the Company or any Company Subsidiary (the items in clauses (i), (ii) and (iii) being referred to collectively as the “**Company Securities**”).

(d) There are no voting trusts or other Contracts to which the Company or any Company Subsidiary is a party with respect to the voting of any capital stock of, or other equity interest in, the Company or any Company Subsidiary.

(e) As of the date of this Agreement, there are no outstanding contractual obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any Company Shares or any other Company Securities or any capital stock of any Company Subsidiary or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any Company Subsidiary or any other person. Each outstanding share of capital stock of each Company Subsidiary is duly authorized, validly issued, fully paid and non-assessable and was issued free of any preemptive rights created by the organizational documents of such Company Subsidiary or any Contract to which such Company Subsidiary is a party, and each such share is owned by the Company or another Company Subsidiary free and clear of all Liens or Contracts or other limitations on the Company’s or any Company Subsidiary’s voting rights. All of the issued and outstanding shares of capital stock of each Company Subsidiary are owned by the Company or another Company Subsidiary, except as disclosed on Section 3.3(e) of the Disclosure Schedule.

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**3.4 Authority Relative to this Agreement.** The Company has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby (collectively, the “**Transactions**”). The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Transactions have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the Transactions. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Purchaser, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors’ rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

### **3.5 No Conflict; Required Filings and Consents.**

(a) The execution and delivery of this Agreement by the Company does not, and the performance of this Agreement by the Company will not, (i) conflict with or violate the Certificate of Incorporation or Bylaws or equivalent organizational documents of the Company or any Company Subsidiary, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, other than the consents described in Section 3.5(b) and the consents listed in Section 3.5(a) of the Disclosure Schedule, (iii) conflict with or violate any U.S. or non-U.S.

law, including any statute, controlling common law, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or other order of a Governmental Authority of competent jurisdiction (“**Law**”) applicable to the Company or any Company Subsidiary or by which any property or asset of the Company or any Company Subsidiary is bound or affected or (iv) result in any breach of or constitute a default (or an event that, with notice or lapse of time or both, would become a default or breach) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any property or asset of the Company or any Company Subsidiary pursuant to, or result in the loss of a material benefit under any Company Material Contract or material Permit to which the Company or any Company Subsidiary is a party or to which any material property, right or asset of the Company or any Company Subsidiary is bound or affected, except, with respect to clauses (ii) — (iv), for any such conflicts, violations, breaches, defaults or other occurrences that, individually or in the aggregate, would not reasonably be expected to (x) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (y) be material to the Company and the Company Subsidiaries taken as a whole.

(b) The execution and delivery of this Agreement by the Company does not, and the performance of this Agreement by the Company will not, require any consent, approval, waiting period expiration or termination, authorization or permit of, or filing with or notification to, any Governmental Authority of competent jurisdiction, except (i) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “**HSR Act**”) and under any other applicable Antitrust Laws, and similar requirements in foreign countries regarding antitrust

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or competition matters and any associated consents, approvals, authorizations, waiting period terminations, or permits, and (ii) where the failure to obtain such consents, approvals, waiting period expirations or terminations, authorizations or permits, or to make such filings or notifications, individually or in the aggregate, would not reasonably be expected to (x) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (y) be material to the Company and the Company Subsidiaries taken as a whole.

### 3.6 Sufficiency of Assets; Title to Assets; .

(a) On the Closing Date, the Owned Company Intellectual Property and other Company Intellectual Property, other assets and properties of the Company and Company Subsidiaries, Company Material Contracts, other Contracts of the Company and Company Subsidiaries, Company Leased Real Property, Systems and Permits, together with the services to be provided to Purchaser, the Company or Company Subsidiaries by Seller under the Services Agreement (to the extent services are derived from Support Assets), will constitute all of assets necessary to conduct the business of the Company and the Company Subsidiaries immediately following the Closing in the same manner, in all material respects, as such business was conducted on the date of this Agreement and as of the Prior Closing Date. Except for (i) certain general corporate or other overhead services provided by the Seller or its subsidiaries to the Company and any Company Subsidiary since the Prior Closing Date and (ii) the assets to be used to provide the services to be provided to Purchaser, the Company or Company Subsidiaries by Seller under the Services Agreement, Seller and its subsidiaries (excluding the Company and any Company Subsidiary) do not, and, immediately following the Closing, will not (x) own, license, lease or have any right with respect to any asset, real property, Intellectual Property or System, (y) be party to or have any right with respect to any Contract or (z) receive any benefit under or have right with respect to any Permit, in each case which are necessary to run the business of the Company and the Company Subsidiaries, in each case and in all material respects, as such business was conducted on the date of this Agreement and as of the Prior Closing Date (other than Support Assets).

(b) Except as set forth in Section 3.6 of the Disclosure Schedules, the Company and the Company Subsidiaries, in the aggregate, have good and legal or beneficial ownership to, or valid leasehold interests in or valid rights under contract to use, all the personal properties and assets reflected on the Financial Statements or acquired by the Company and Company Subsidiaries since June 30, 2017 (subject to customary changes reflecting ordinary course operations (e.g., expenditures of cash, collections of accounts receivable, sales of inventory) free and clear of any Liens (other than (i) Permitted Liens and (ii) Liens granted pursuant to any lease of machinery, equipment, motor vehicles, furniture or other personal property).

(c) Since January 19, 2017, the Company and the Company Subsidiaries have taken commercially reasonable steps to provide for the remote-site back-up of data and information critical to the Company and the Company Subsidiaries (including such data and information that is stored on magnetic or optical media in the ordinary course of business) in a commercially reasonable attempt to avoid material disruption or interruption to the business of the Company and the Company Subsidiaries. The Company and the Company Subsidiaries

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currently have in place commercially reasonable disaster recovery and business continuity plans and procedures.

**3.7 Permits; Compliance.** Each of the Company and the Company Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, certifications, approvals and orders of any Governmental Authority of competent jurisdiction, including with respect to any Environmental Laws, necessary for each of the Company or the Company Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the “**Permits**”), except where the failure to have, or the suspension or cancellation of, any of the Permits, individually or in the aggregate, would not reasonably be expected to (x) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (y) be material to the Company and the Company Subsidiaries taken as a whole. No suspension or cancellation of any of the Permits is pending or, to the knowledge of the Company, threatened, and there have occurred no defaults under, or events giving rise to a right of termination, amendment or cancellation of any such Permits (with or without notice, the lapse of time or both), except where the failure to have, or the suspension or cancellation of any of the Permits, individually or in the aggregate, would not reasonably be expected to (x) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (y) be material to the Company and the Company Subsidiaries taken as a whole. The Company and all Company Subsidiaries are, and have been since January 1, 2015, in material compliance with all Law applicable to the Company or any Company Subsidiary or by which any property or asset of the Company or any Company Subsidiary is bound or affected, or any Permit to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary or any property or asset of the Company or any Company Subsidiary is bound, except for any such conflicts, defaults, breaches or violations that, individually or in the aggregate, would not reasonably be expected to (x) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (y) be material to the Company and the Company Subsidiaries taken as a whole. As of the date of this Agreement, neither the Company nor any of the Company Subsidiaries has received any written notice from any Governmental Authority of competent jurisdiction alleging that it is not in compliance in all material respects with any Law, except where such non-compliance, individually or in the aggregate, would not reasonably be expected to (x) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (y) be material to the Company and the Company Subsidiaries taken as a whole.

### 3.8 SEC Filings; Financial Statements.

(a) Other than as listed in Section 3.8(a) of the Disclosure Schedule, the Company filed all forms, reports and other documents required to be filed or furnished by it with the SEC from January 1, 2015 to the end of the Prior Reporting Period (such documents, including any amendments thereto, the “**SEC Reports**”). Each SEC Report (x) complied as to form in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), or the Exchange Act, as the case may be, and the Sarbanes-Oxley Act of 2002 (“**SOX**”) and the applicable rules and regulations promulgated thereunder, and (y) did not, at the time it was filed (or, if amended, as of the date of such amendment), contain any untrue statement of a material fact or omit to state a material fact required to be

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stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No Company Subsidiary has been or is required to file any form, report or other document with the SEC and since the end of the Prior Reporting Period, the Company has not been required to file any form, report or other document with the SEC.

(b) (i) Other than as listed in Section 3.8(b) of the Disclosure Schedule, the Company has provided to Purchaser true, accurate and complete copies of (A) the audited consolidated balance sheets of the Company and the consolidated Company Subsidiaries as of December 31, 2016, December 31, 2015 and December 31, 2014 and the related audited statements of income, cash flows and stockholders’ equity for the fiscal year then ended (the “**Annual Financial Statements**”) and (B) the unaudited consolidated balance sheet of the Company and the consolidated Company Subsidiaries as of June 30, 2017 and the related unaudited statements of income, cash flows and stockholders’ equity for the period then ended (the “**Interim Financial Statements**”; together with the Annual Financial Statements, the “**Financial Statements**”). The Financial Statements have been prepared in accordance with U.S. generally accepted accounting principles (“**GAAP**”) applied on a consistent basis throughout the periods covered thereby and fairly present in all material respects the consolidated financial position, results of operations, cash flows and stockholders’ equity of the Company and its consolidated Company Subsidiaries as at the respective dates thereof and for the respective periods referred to therein, subject, in the case of Interim Financial Statements, to the absence of footnotes and to normal year-end adjustments.

(c) Other than as listed in Section 3.8(c) of the Disclosure Schedule, except as and to the extent set forth on the audited consolidated balance sheet of the Company and its consolidated Company Subsidiaries as of December 31, 2016, including the notes thereto (the “**Company Balance Sheet**”), neither the Company nor any Company Subsidiary has any liability or obligation of a nature required by GAAP to be disclosed on a consolidated balance sheet of the Company, except for (x) liabilities and obligations incurred in the ordinary course of business since the date of the Company Balance Sheet, (y) liabilities that have not had, and would not reasonably be material to the Company and the Company Subsidiaries, taken as a whole, and (z) liabilities and obligations incurred in connection with the Transactions or as required by this Agreement.

(d) Other than as listed in Section 3.8(d) of the Disclosure Schedule, during the Prior Reporting Period, each of the principal executive officer of the Company and the principal financial officer of the Company (and each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable) made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of SOX and the rules and regulations of the SEC promulgated thereunder with respect to the SEC Reports, and the statements contained in such certifications are true and correct. For purposes of this Section 3.8(d), “principal executive officer” and “principal financial officer” shall have the meanings given to such terms in SOX.

(e) The Company maintains a system of internal controls over financial reporting and accounting designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes,

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including to provide reasonable assurance that: (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets that could have a material effect on the Company’s financial statements is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(f) Except as set forth in Section 3.8(f) of the Disclosure Schedule there has been no material complaint, allegation, assertion or claim that the Company or any Company Subsidiary has engaged in improper or illegal accounting or auditing practices or maintains improper or inadequate internal accounting controls. As of the date of this Agreement, no current or former attorney representing the Company or any of the Company Subsidiaries has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees or agents to the Company’s board of directors or any committee thereof or to any director or executive officer of the Company.

(g) To the knowledge of the Company, since the Prior Closing Date to the date of this Agreement, no employee of the Company or any of the Company Subsidiaries has provided, is providing, or has threatened in writing to provide information to any law enforcement agency regarding the possible commission of any crime or the violation or possible violation of any applicable legal requirements. The Company has made available to Purchaser a summary of all material complaints since January 19, 2017 to the date of this Agreement, through Company’s whistleblower hotline or equivalent system for receipt of employee concerns regarding possible violations of Laws with respect to the Company and Company Subsidiaries.

3.9 **Absence of Certain Changes or Events.** Since the date of the Company Balance Sheet, (a) the Company and the Company Subsidiaries have conducted their businesses in the ordinary course consistent with past practice in all material respects except for actions that the Company has agreed not to take pursuant to Section 6.1, (b) there has not been a Material Adverse Effect and (c) to the date of this Agreement, none of the Company or any of the Company Subsidiaries has taken any action that if taken between the date hereof and the Closing would constitute a breach of Section 6.1.

3.10 **Absence of Litigation.** Except as set forth in Section 3.10, of the Disclosure Schedule, there is (i) no Action pending, or (ii) or to the knowledge of the Company, no inquiry or investigation pending or Action threatened against the Company or any Company

Subsidiary or affiliate (including against Seller or its affiliates), or any property or asset of the Company or any Company Subsidiary which would reasonably be expected to (A) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (B) be material to the Company and the Company Subsidiaries, taken as a whole. Neither the Company nor any Company Subsidiary or affiliate nor Seller or any of Seller's affiliates, nor any property or asset of the Company or any Company Subsidiary is subject to any consent decree, settlement agreement or similar written agreement between the Company and any Governmental Authority of competent jurisdiction that is materially adverse to the Company, or any order, writ, judgment, injunction, decree,

determination or award of any Governmental Authority of competent jurisdiction, in each case, that would reasonably be expected to (x) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (y) be material to the Company or the Company Subsidiaries, taken as a whole.

### 3.11 Employee Benefit Plans.

(a) Section 3.11(a) of the Disclosure Schedule lists all Company Benefit Plans as of the date of this Agreement (except for any Company Benefit Plan for which Purchaser, the Company and the Company Subsidiaries are not assuming any liability) "**Company Benefit Plans**" shall mean: (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) and all bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, retiree medical or life insurance, supplemental retirement, severance, retention or other material benefit plans, programs or arrangements, and all employment, termination, severance or retention Contracts to which the Company or any ERISA Affiliate is a party (except for offer letters that provide for employment that is terminable at will and without material cost or liability to the Company or the Company Subsidiaries), with respect to which the Company or any ERISA Affiliate has or could have any material obligation or that are maintained, contributed to or sponsored by the Company or any ERISA Affiliate for the benefit of any current or former employee, officer or director of the Company or any ERISA Affiliate, (ii) each employee benefit plan for which the Company or any Company Subsidiary could incur liability under Section 4069 of ERISA in the event such plan has been or were to be terminated, (iii) any plan in respect of which the Company or any Company Subsidiary could incur liability under Section 4212(c) of ERISA, and (iv) any material consulting contracts, arrangements or understandings between the Company or any Company Subsidiary and any natural person consultant of the Company or any Company Subsidiary (all Company Benefit Plans, excluding Company Benefit Plans not subject to U.S. Law, the "**US Benefit Plans**"). The Company has made available to Purchaser a true and complete copy of each Company Benefit Plan (or a true and complete summary of the material terms thereof) and has made available to Purchaser a true and complete copy of each material document, if any, prepared in connection with each such Company Benefit Plan, including as applicable (i) a copy of each trust or other funding arrangement, (ii) the most recent summary plan description and summary of material modifications, (iii) annual reports on Internal Revenue Service ("**IRS**") Form 5500 for the most recent two (2) plan years, (iv) the most recently received IRS determination letter for each such Company Benefit Plan, and (v) the most recently prepared actuarial report and financial statement in connection with each such Company Benefit Plan. Neither the Company nor any Company Subsidiary has any express or implied commitment (i) to create, incur liability with respect to or cause to exist any other material employee benefit plan, program or arrangement, (ii) to enter into any Contract to provide compensation or benefits to any individual other than in the ordinary course of business, or (iii) to modify, change or terminate any Company Benefit Plan, other than with respect to a modification, change or termination required by ERISA, the Code or other applicable law.

(b) No Company Benefit Plan is a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA) (a "**Multiemployer Plan**"), a "multiple employer plan" (within the meaning of Section 413(c) of the Code) (a "**Multiple Employer**

**Plan**"), a "multiple employer welfare arrangement" (within the meaning of Section 3(40) of ERISA) or, except as set forth on Section 3.11(b) of the Disclosure Schedule, a plan that is subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA.

(c) Except as set forth in Section 3.11(c) of the Disclosure Schedule, none of the Company Benefit Plans (i) provides for the payment of separation, severance, retention, termination or similar-type benefits to any person, (ii) obligates the Company or any Company Subsidiary to pay separation, severance, retention, termination or similar-type benefits solely or partially as a result of any Transaction, or (iii) obligates the Company or any Company Subsidiary to make any payment or provide any benefit in connection with a "change in ownership or effective control", within the meaning of such term under Section 280G of the Code, or in connection with an event directly or indirectly related to such a change. None of the Company Benefit Plans provides for or promises retiree medical, disability or life insurance benefits to any current employee, officer or director of the Company or any Company Subsidiary, except as required by Section 4980B of the Code, Part 6 of Title I of ERISA or similar applicable state law. There is no Company Benefit Plan, contract, plan or arrangement covering any current or former director, employee, consultant, or service provider of the Company or any Company Subsidiary that, individually or collectively, could give rise to any payment or benefit as a result of the Transactions contemplated by this Agreement. Except as provided in this Agreement or as set forth in Section 3.11(c) of the Disclosure Schedule, the execution of this Agreement and the consummation of the Transactions contemplated by this Agreement (alone or together with any other event which, standing alone, would not by itself trigger such entitlement or acceleration) will not (i) entitle any person to any payment, forgiveness of indebtedness, vesting, distribution, or increase in benefits under or with respect to any Company Benefit Plan, (ii) otherwise trigger any acceleration (of vesting or payment of benefits or otherwise) under or with respect to any Company Benefit Plan, or (iii) trigger any obligation to fund any Company Benefit Plan. No current or former director, employee, or consultant of the Company is entitled to receive a gross-up payment from the Company with respect to any taxes that may be imposed upon such individual pursuant to Section 409A of the Code, Section 4999 of the Code, or otherwise.

(d) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Company or the Company Subsidiaries, taken as a whole: (i) each Company Benefit Plan has been operated in all respects in accordance with its terms and the requirements of all applicable Laws including ERISA and the Code, (ii) the Company, the Company Subsidiaries, and any other relevant parties have performed all obligations required to be performed by them and are not in material default under or in violation of, and, to the knowledge of the Company, there is no material default or violation by any party to, any Company Benefit Plan and (iii) as of the date of this Agreement, no Action is pending or, to the knowledge of the Company, threatened with respect to any Company Benefit Plan (other than routine claims for benefits in the ordinary course of business).

(e) Each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code has timely received a favorable determination, notification or advisory letter from the IRS covering all of the provisions applicable to such Company Benefit Plan for which such

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pronouncements in which to apply for such letter and to make any amendments necessary to obtain a favorable determination, or may rely upon an opinion letter for a prototype plan, and each trust established in connection with any such Company Benefit Plan that is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a determination letter from the IRS that it is so exempt, has a remaining period of time under applicable Treasury Regulations or IRS pronouncements in which to apply for such letter and to make any amendments necessary to obtain a favorable determination, or may rely upon an opinion letter for a prototype plan. No Company capital stock is used as a funding vehicle or otherwise permitted as an investment option with respect to any Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(f) There has not been any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code and not otherwise exempt under Section 408 of ERISA) with respect to any US Benefit Plan. Neither the Company nor any ERISA Affiliate has incurred any material liability under, arising out of or by operation of Title IV of ERISA (other than liability for premiums to the Pension Benefit Guaranty Corporation arising in the ordinary course), including any material liability in connection with (i) the termination or reorganization of any employee benefit plan subject to Title IV of ERISA, or (ii) the withdrawal from any Multiemployer Plan or Multiple Employer Plan, and, to the knowledge of the Company, no fact or event exists that could give rise to any such liability. 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, the United States Department of Labor, or other Governmental Authority of competent jurisdiction with respect to any Company Benefit Plan. All contributions, premiums or payments required to be made with respect to any Company Benefit Plan have been made on or before their due dates, except as would not result in material liability to the Company or its subsidiaries.

(g) Each Company Benefit Plan that is a “nonqualified deferred compensation plan” (as defined for purposes of Section 409A(d)(1) of the Code) subject to Section 409A of the Code has complied at all times with Section 409A of the Code with respect to its form and operation unless otherwise exempt.

(h) Notwithstanding any other provision of this Agreement, other than with respect to Company Material Contracts addressed by clauses (v) and (viii) of Section 3.17(a) and Section 3.17(b) with respect solely to such Material Contracts, and other than with respect to those representations and warranties contained in 3.15(e) and, to the extent applicable, Section 3.12, the representations and warranties contained in the foregoing subsections of this Section 3.11 are the sole and exclusive representations and warranties of the Company relating to employee benefit matters of any kind.

### 3.12 Labor and Employment Matters.

(a) The Company represents and warrants that:

(i) As of the date of this Agreement, there are no material controversies pending or, to the knowledge of the Company, threatened between the Company or

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any Company Subsidiary and any of their respective present or former employees or independent contractors.

(ii) As of the date of this Agreement, neither the Company nor any Company Subsidiary is a party to any collective bargaining agreement, work council agreement, work force agreement or any other labor union Contract applicable to persons employed by the Company or any Company Subsidiary; to the knowledge of the Company none of the employees, consultants or independent contractors of the Company or any Company Subsidiary is represented by any union, works council, or any other labor organization; and, to the knowledge of the Company, there are no activities or proceedings of any labor union to organize any such employees or independent contractors.

(iii) As of the date of this Agreement, there are no grievances filed pursuant to any collective bargaining agreement, work council agreement or other labor contract, or otherwise, currently pending against the Company or any Company Subsidiary; nor are there any unfair labor practice complaints pending, or, to the knowledge of the Company, threatened, against the Company or any Company Subsidiary before the National Labor Relations Board or any court, tribunal or other Governmental Authority of competent jurisdiction, or any current union representation questions or organization efforts involving employees of the Company or any Company Subsidiary.

(iv) Except as would not reasonably be expected to be material to the Company or the Company Subsidiaries, taken as a whole, all individuals who are or were performing consulting or other services for the Company or any Company Subsidiary have been correctly classified by the Company or the Company Subsidiary in all material respects as either “independent contractors” or “employees” as the case may be.

(v) Except as would not reasonably be expected to be material to the Company or the Company Subsidiaries, taken as a whole, all individuals who are or were performing services for the Company or any Company Subsidiary have been correctly classified by the Company or the Company Subsidiary in all material respects as “exempt” from all applicable wage and hour Laws, including but not limited to Laws governing minimum wage, overtime compensation, meal periods and rest breaks.

(vi) As of the date of this Agreement, there is no strike, slowdown, work stoppage or lockout, or, to the knowledge of the Company, threat thereof, by or with respect to any employees of the Company or any Company Subsidiary. No consent of any labor union is required to consummate any of the Transactions. There is no obligation to inform, consult or obtain consent in advance of or simultaneously with the Transactions of any works council, employee representatives or other representative bodies in order to consummate the Transactions, except as set forth on Section 3.12(a)(vi) of the Disclosure Schedule.

(b) Except as would not reasonably be expected to be material to the Company or the Company Subsidiaries, taken as a whole, the Company and the Company Subsidiaries are in compliance with all applicable Laws relating to the employment of labor, including those related to wages, hours, collective bargaining, equal employment opportunity, occupational health and safety, immigration, individual and collective



consultation, notice of termination, and redundancy, and are not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing. Except as would not reasonably be expected to be material to the Company or the Company Subsidiaries, taken as a whole, there is no charge or other Action pending or, to the knowledge of the Company, threatened before the U.S. Equal Employment Opportunity Commission (the “EEOC”), any court, or any other Governmental Authority of competent jurisdiction with respect to the employment practices of the Company or any Company Subsidiary, except as described on Section 3.12(b) of the Disclosure Schedule. Neither the Company nor any Company Subsidiary is a party to, or otherwise bound by, any consent decree with, or citation by, any the EEOC or any other Governmental Authority of competent jurisdiction relating to employees or employment practices. Except as would not reasonably be expected to be material to the Company or the Company Subsidiaries, taken as a whole, since January 1, 2015 to the date of this Agreement, neither the Company nor any Company Subsidiary has received any notice of intent by the EEOC or any other Governmental Authority of competent jurisdiction responsible for the enforcement of labor or employment Laws to conduct an investigation or inquiry relating to the Company or any Company Subsidiary, and to the knowledge of the Company, no such investigation or inquiry is in progress. The employment of those employees of the Company and the Company Subsidiaries hired and based in the U.S. is terminable at will without cost or liability to the Company or Company Subsidiaries, except for amounts of base salary, base wage rate or commissions earned prior to the time of termination and except as set forth in Section 3.12(b) of the Disclosure Schedule.

(c) The Company has made available to Purchaser a list, as of the date of this Agreement, of each employee, independent contractor and consultant that provides services to the Company or any Company Subsidiary, and the location in which each such employee, independent contractor and consultant is based and primarily performs his or her duties or services. As of the date of this Agreement, no officer or employee holding the position of vice president or above has advised the Company or any Company Subsidiary in writing of his or her intention to terminate his or her relationship or status as an employee, independent contractor or consultant of the Company or the Company Subsidiary for any reason, including because of the consummation of the Transactions and, except as set forth on Section 3.12(c)-1 of the Disclosure Schedule, the Company and all Company Subsidiaries have no plans or intentions as of the date hereof to terminate any such employee, independent contractor or consultant. Section 3.12(c)-2 of the Disclosure Schedule sets forth a complete and accurate schedule, including offer date, position, location, base salary, wage rate or commission opportunity, target bonus opportunity and any other promised compensation, of all offers of employment that are outstanding to any person from the Company or any Company Subsidiary as of the date of this Agreement.

(d) Notwithstanding any other provision of this Agreement, other than with respect to Company Material Contracts addressed by clauses (v) and (viii) of Section 3.17(a) and Section 3.17(b) with respect to such Material Contracts, and other than with respect to those representations and warranties contained in, to the extent applicable, Section 3.11, the representations and warranties contained in the foregoing subsections of this Section 3.12 are the sole and exclusive representations and warranties of the Company relating to labor matters of any kind.

### 3.13 Property and Leases.

(a) Neither the Company nor any Company Subsidiary owns any real property.

(b) Section 3.13(b) of the Disclosure Schedule sets forth a complete and accurate list as of the date of this Agreement of all leases of real property (“**Company Leased Real Property**”) to which the Company or any Company Subsidiary is a party, including the location of the premises leased, subleased or licensed pursuant to the lease for such Company Leased Real Property. All such leases of Company Leased Real Property, and all amendments and modifications thereto, are in full force and effect and have not been modified or amended, and there exists no default under any such lease by the Company or any Company Subsidiary, nor any event which, with notice or lapse of time or both, would constitute a default thereunder by the Company or any Company Subsidiary, except as would not reasonably be expected to prevent or delay beyond the Outside Date consummation of the Share Purchase or any other Transactions and as, individually or in the aggregate, would not be material to the Company and the Company Subsidiaries, taken as a whole. Except as would not reasonably be expected to prevent or delay beyond the Outside Date consummation of the Share Purchase or any other Transactions and as, individually or in the aggregate, would not be material to the Company and the Company Subsidiaries, taken as a whole, neither the Company nor any Company Subsidiary has made any material alterations, additions or improvements to the Company Leased Real Property that are required to be removed (or of which any landlord or sublandlord could require removal) at the termination of the applicable lease term. Neither the Company nor any Company Subsidiary has received written notice of any condemnation, expropriation or other proceeding in eminent domain affecting the Company Leased Real Property or any portion thereof or interest therein, and to the knowledge of the Company, no such proceedings are threatened or proposed. To the knowledge of the Company, the Company Leased Real Property is not subject to any special assessment nor zoning or other land-use regulation proceeding, nor any change in any Law or Permit that would reasonably be expected to prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or that seeks to impose any material legal restraint on or prohibition against or limit the Company’s ability to operate the business of the Company and the Company Subsidiaries substantially as it was operated prior to the date of this Agreement with respect to the Company Leased Real Property.

(c) Except as set forth in Section 3.13(c) of the Disclosure Schedule, neither the Company nor any Company Subsidiary has subleased, licensed or otherwise granted to any other person any rights to use, occupy or possess any part of the Company Leased Real Property. Neither the Company nor any Company Subsidiary has collaterally assigned or granted any other Lien (other than Permitted Liens) in the Company Leased Real Property.

### 3.14 Intellectual Property.

(a) Section 3.14(a) of the Disclosure Schedule contains a complete and accurate list of all Registered Company Intellectual Property, in each case listing, as applicable, (i) the jurisdiction where the application/registration is located (or, for Domain Names, the applicable registrar), (ii) the beneficial and registered owner of, or applicant for, such Intellectual

Property, (iii) the application or registration number and (iv) the filing date or issuance/registration/grant date.

(b) The Company and the Company Subsidiaries are current in the payment of all registration, maintenance and renewal fees with respect to the Registered Company Intellectual Property, except in each case as the Company has elected in its reasonable business judgment to abandon or permit to lapse a registration or application. To the knowledge of the Company, all Registered Company Intellectual Property is valid, subsisting and enforceable. The Company has filed all currently or previously required affidavits, responses, recordations, certificates and other documents and taken all currently or previously required actions for the purposes of obtaining, maintaining, perfecting, preserving and renewing the Registered Company Intellectual Property and, to the knowledge of the Company, its validity and enforceability. The Company and the Company Subsidiaries have complied with all applicable rules, policies, and procedures of the United States Patent and Trademark Office, United States Copyright Office, and any applicable foreign Governmental Authorities with respect to each item of Registered Company Intellectual Property, to the extent that compliance affects the enforceability or validity of such Registered Company Intellectual Property.

(c) Since January 1, 2015, all Trademarks included in the Registered Company Intellectual Property have been in use sufficient to maintain the registrability of such Trademarks, except where the failure to do so would not have a Material Adverse Effect.

(d) Except as set forth in Section 3.14(c) of the Disclosure Schedule, neither the Company nor any Company Subsidiary is a party to or bound by any decree, judgment, order, settlement agreements, or arbitral award that requires the Company or any Company Subsidiary to grant to any Third Party any license, covenant not to sue, immunity or other right with respect to any Owned Company Intellectual Property.

(e) Since January 1, 2015, except as set forth in Section 3.14(e) of the Disclosure Schedule, no Registered Company Intellectual Property is or has been involved in any interference, reissue, reexamination, opposition, cancellation or other proceeding, including any proceeding regarding invalidity or unenforceability, in the United States or any foreign jurisdiction, and, to the knowledge of the Company, no such action has been threatened in any written communication delivered to the Company or any Company Subsidiary.

(f) The Company and Company Subsidiaries have, in accordance with the applicable Law of each relevant jurisdiction, taken reasonable steps consistent with industry standards to protect their rights in and to their Trade Secrets, including, to the knowledge of the Company, by not making any disclosure of Trade Secrets except under written confidentiality obligations (other than former Trade Secrets intentionally publicly disclosed by the Company without confidentiality obligations in its reasonable business judgment), in each case, except where the failure to do so would not be material to the Company and the Company Subsidiaries, taken as a whole. To the knowledge of the Company, there has been no (A) misappropriation or unauthorized disclosure of any material Trade Secret included in the Owned Company Intellectual Property or (B) breaches of any obligations of confidentiality with respect to the Company Owned Intellectual Property. The Company and Company Subsidiaries are in compliance in all material respects with and have not breached in any material respect any

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contractual obligations to protect the Trade Secrets of Third Parties in accordance with the terms of any Contracts relating to such Third Party Trade Secrets.

(g) To the knowledge of the Company, there are no facts or circumstances that would be reasonably expected to render invalid or unenforceable any of the material Intellectual Property Rights included in the Owned Company Intellectual Property, except as would not, individually or in the aggregate, reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole. To the knowledge of the Company, there are no facts or circumstances with respect to the title to the Owned Company Intellectual Property that would reasonably be expected to adversely affect, limit, restrict, impair, or impede the ability of the Company and the Company Subsidiaries to use and practice such Owned Company Intellectual Property from and after the Closing in substantially the same manner in which it was used prior to the Closing. Since January 1, 2015, neither the Company nor any Company Subsidiary has received any written notice of any Action challenging the validity or enforceability of any of the Intellectual Property Rights included in the Owned Company Intellectual Property, or containing any threat on the part of any person to bring an Action that any of the Intellectual Property Rights included in the Owned Company Intellectual Property are unenforceable or have been misused, except as would not, individually or in the aggregate, reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole.

(h) Since January 1, 2015, each employee, consultant and contractor of the Company or any Company Subsidiary who is or was involved in the development of any material Company Products has executed and delivered to the Company or a Company Subsidiary, and the Company or a Company Subsidiary has in its possession, a valid and enforceable proprietary information, confidentiality and assignment agreements that, to extent permitted by applicable Law, assigns to the Company and/or a Company Subsidiary (or otherwise grants sufficient right and interest in) all Intellectual Property and Intellectual Property Rights that are developed by the employees in the course of their employment, and, with respect to consultants or contractors, all Intellectual Property and Intellectual Property Rights that are developed by such consultants or contractors in the course of performing services for the Company or any Company Subsidiaries (each, an “**Employee IP Agreement**”). Since January 1, 2015, to the knowledge of the Company, no person who is or was an employee, officer, consultant or contractor of the Company or any Company Subsidiary involved in the development of any material Owned Company Intellectual Property is in default or breach of any term of any Employee IP Agreement, non-disclosure agreement, assignment agreement, or similar Contract relating to Intellectual Property or Intellectual Property Rights entered into between such employee, officer, consultant or contractor and the Company or any Company Subsidiary in connection with such individual’s employment or other engagement with the Company or any Company Subsidiary, except where such default or breach would not reasonably be expected to have a Material Adverse Effect. No current or former employee, consultant or contractor of the Company or any Company Subsidiary has or claimed any ownership interest, in whole or in part, whether or not currently exercisable, in any material Owned Company Intellectual Property. To the knowledge of the Company, all assignments of registered Patents included in the Registered Company Intellectual Property to the Company or any Company Subsidiary have been duly executed and recorded with the appropriate Governmental Authorities.

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(i) To the knowledge of the Company, except as set forth in Section 3.14(i) of the Disclosure Schedule, no Third Party is infringing, misappropriating, using or disclosing without authorization or otherwise violating any Intellectual Property Rights included in the Owned Company Intellectual Property or exclusively licensed to the Company or any Company Subsidiary. Since January 1, 2015, neither the Company nor any Company Subsidiary has commenced any Action with respect to infringement or misappropriation of any Intellectual Property Rights included in the Owned

Company Intellectual Property or exclusively licensed to Company or any Company Subsidiary against any Third Party. Since January 1, 2015, neither the Company nor any Company Subsidiary has received any written notice of any Action challenging the Company's or any Company Subsidiary's ownership of any Intellectual Property Rights included in the Owned Company Intellectual Property or claiming that any other person has any claim of legal or beneficial ownership with respect thereto.

(j) Neither the conduct of the business of the Company and each Company Subsidiary nor the development, manufacture, sale, licensing or use of any of the Company Products has infringed, misappropriated or otherwise violated, or is infringing, misappropriating or otherwise violating any Intellectual Property Rights of any Third Party. Since January 1, 2015, except as set forth in Section 3.14(h) of the Disclosure Schedule, the Company and the Company Subsidiaries have not received any written notice of any Action alleging that the Company or any Company Subsidiary has infringed or otherwise violated any Intellectual Property Rights of any person, or that any Company Product infringes, misappropriates, uses or discloses without authorization, or otherwise violates any Intellectual Property Rights of any person. Except as expressly set forth in Section 3.14(h), no provision of this Agreement is, or will be construed to be, a representation or warranty by the Company or the Company Subsidiaries with respect to the infringement, misappropriation or other violation of any of the Intellectual Property or Intellectual Property Rights of any Third Party.

(k) The Company and the Company Subsidiaries own the Owned Company Intellectual Property, except for any moral rights of any Third Party existing therein, free and clear of all Liens (except for non-exclusive licenses), and have not exclusively licensed (under any Contract in effect as of the date of this Agreement) any such Owned Company Intellectual Property to any Third Party. The Company and the Company Subsidiaries have the license or right to use all other material Company Intellectual Property used in the Company's business as conducted on the date hereof.

(l) The Owned Company Intellectual Property and other Company Intellectual Property (i) constitutes all of Intellectual Property used in the Company's business as conducted on the date hereof and (ii) is sufficient in all material respects to conduct the Company's business as conducted on the date hereof. To the knowledge of the Company, the consummation of the Transactions will not result in the breach or termination of, or trigger or accelerate any material right or obligation under, any Contract regarding material Company Intellectual Property.

(m) Subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally, each License Contract is valid, binding and in full force and effect with respect to the Company or the relevant Company Subsidiary and, to the knowledge of the Company, the other party thereto. Neither the Company

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nor the relevant Company Subsidiary is in material default under any License Contract and to the knowledge of the Company, none of the other parties to any License Contract is in material default thereunder.

(n) As of the date of this Agreement, the Company and Company Subsidiaries are in compliance in all material respects with the terms and conditions of the licenses for Open Source that are incorporated into any Company Product. No Company Product contains, is derived from, is distributed with or is being or was developed using Open Source in a manner that imposes a requirement or condition that any Company Product or part thereof (other than the Open Source itself): (A) be disclosed or distributed in source code form; (B) be licensed for the purpose of making modifications or derivative works; or (C) be redistributable at no charge.

(o) Section 3.14(o) of the Disclosure Schedule contains a list of all standards-setting organizations, industry bodies and consortia, and other multi-party special interest groups in which Company or any Company Subsidiary is currently participating, or in which Company or any Company Subsidiary has participated since January 1, 2015, to the extent that such past participation imposes or purports to impose any continuing obligations on Company or any Company Subsidiary (or, following the Closing, on Purchaser) with respect to licensing or granting of any Intellectual Property Rights included in the Owned Company Intellectual Property (other than licenses that survive with respect to the Copyright in contributions made during such past participation).

(p) **"Company Products"** means all products and services of the Company or Company Subsidiaries that the Company or Company Subsidiaries currently make publicly or commercially available. The Company and Company Subsidiaries have taken commercially reasonable steps in accordance with generally accepted industry standards to identify (and, as deemed appropriate by the Company or Company Subsidiaries, to address) material defects, bugs, and errors in the Company Software included within the Company Products. To the knowledge of the Company, the Company Software included in the Company Products does not contain any disabling codes or instructions, spyware, Trojan horses, worms, viruses or other software routines intentionally designed to permit or cause unauthorized access to, or unauthorized disruption, impairment, disablement, or destruction of, Software, data or other materials by a Third Party.

(q) As of the date of this Agreement, the Company and each Company Subsidiary has complied in all material respects: (i) with applicable Laws; and (ii) with their respective privacy policies; in each case, relating to the use, collection, disclosure and transfer of the personally identifiable information of Company Product customers and such customers' end-users.

(r) The Company and each Company Subsidiary has implemented and maintains a commercially reasonable security plan that (i) identifies internal and external risks to the security of its confidential information, including personally identifiable information, (ii) implements reasonable administrative, electronic and physical safeguards to control the identified risks and (iii) maintains notification procedures in compliance with applicable law in the case of any breach of security compromising data containing personally identifiable

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information. To the knowledge of the Company, since January 1, 2015, neither the Company nor any Company Subsidiary has experienced any material breach of security or other material unauthorized access by any Third Party to confidential information, including personally identifiable information, within the Company's or Company Subsidiary's control.

(a) Each of the Company and the Company Subsidiaries has filed, or caused to be filed, all Tax Returns that it was required to file under applicable laws and regulations, and has timely paid (or there has been timely paid with respect to it) all Taxes shown thereon as due and owing and all other Taxes required to be paid, except for Taxes being contested in good faith. There are no Liens for Taxes (other than Taxes not yet delinquent or being contested in good faith and for which reserves in accordance with GAAP have been established on the Company Financial Reports as adjusted in the ordinary course of business through the Closing) upon any assets of the Company or any of the Company Subsidiaries. All Seller Taxes are included as liabilities in the calculation of Company Closing Net Working Capital.

(b) Each of the Company and the Company Subsidiaries have duly and timely withheld or collected all Taxes that the Company or any of the Company Subsidiaries are required by Law to withhold or collect, and have duly and timely paid over to the appropriate Governmental Body such Taxes to the extent due and payable.

(c) There is no dispute or claim concerning any Tax liability of the Company or any of the Company Subsidiaries either claimed or raised by any Tax Authority in writing which remains unpaid or unresolved.

(d) Neither the Company nor any of the Company Subsidiaries has waived or granted an extension of any statutes of limitations in respect of any Tax Returns which waiver or extension remains in effect. No waiver extending the statutory period of limitations applicable to any Tax Returns of the Company or any of the Company Subsidiaries has been requested in writing by any Tax Authority, which waiver remains in effect.

(e) The Transactions will not result in the payment or series of payments by the Company or any of the Company Subsidiaries to any person of an “excess parachute payment” within the meaning of Section 280G of the Code, or any similar payment, that is not deductible for federal, state, local or foreign Tax purposes. Additionally, there is no contract to which the Company or any of the Company Subsidiaries is a party that, individually or collectively, (i) could give rise to the payment of any amount that would not be deductible pursuant to Section 162(m) or Section 280G of the Code, or (ii) could require the Company, the Company Subsidiaries or Purchaser or its subsidiaries to make a gross-up a payment to any employee of the Company or any of the Company Subsidiaries or cause a penalty tax under Section 4999 or Section 409A of the Code.

(f) Neither the Company nor any Company Subsidiary will be required to include any item of income in, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of

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any (i) change in method of accounting made prior to the Closing, (ii) closing agreement or similar agreement entered into with any Tax Authority prior to the Closing, (iii) installment sale or open transaction made prior to the Closing or (iv) election under Section 108(i) of the Code made prior to the Closing.

(g) None of the Company or the Company Subsidiaries has been included in any “consolidated,” “unitary” or “combined” Tax Return (other than Tax Returns for which the Seller or the Company is the common parent) provided for under the laws of the U.S., any foreign jurisdiction or any state or locality with respect to Taxes for any Taxable year and neither Company nor any Company Subsidiary has any liability for, or obligation to contribute to the payment of, any Tax of any person other than the Company or a Company Subsidiary under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as transferee or successor.

(h) None of the Company or any of the Company Subsidiaries has constituted either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code in the two years prior to the date of this Agreement (or will constitute such a corporation in the two years prior to the Closing) or that otherwise constitutes part of a “plan” or “series of related transactions” within the meaning of Section 355(e) of the Code in conjunction with the Share Purchase.

(i) No written claim has been made by any Tax Authority in a jurisdiction where the Company or any Company Subsidiary has not filed a Tax Return that it is or may be subject to Tax by such jurisdiction.

(j) None of the Company nor any Company Subsidiary is a party to or bound by any Tax allocation, sharing or indemnity agreement (other than (i) any such agreement solely among the Company and the Company Subsidiaries and (ii) any indemnification provisions for Taxes contained in credit agreements, leases or other commercial agreements the primary purposes of which do not relate to Taxes).

(k) Neither the Company nor any Company Subsidiary has engaged in a “listed transaction” as defined in Section 6707A(c)(2) of the Code and Treasury Regulation Section 1.6011-4(b).

(l) Notwithstanding any other provision of this Agreement, (x) the representations and warranties contained in the foregoing subsections of this Section 3.15 and (to the extent applicable) in Section 3.11, are the sole and exclusive representations and warranties of the Company relating to any Taxes or Tax Returns of any kind and (y) nothing in this Agreement (including this Section 3.15) will be construed as providing a representation or warranty with respect to the existence, amount, expiration date or availability of, or limitations on, any Tax attribute of the Company or any Company Subsidiary.

3.16 **Environmental Matters.** Except as set forth on Section 3.16 of the Disclosure Schedule, (a) to the knowledge of the Company, the Company and each Company Subsidiary and their respective products are and have been in compliance in all

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material respects with all applicable Environmental Laws; (b) (i) none of the properties currently or formerly owned, leased or operated by the Company or any Company Subsidiary (including soils and surface and ground waters) have at any time been used by the Company or any Company Subsidiary or, to the knowledge of the Company, any other person to make, store, handle, treat, dispose of, generate or transport Hazardous Substances in violation of any applicable Environmental Law, and (ii) none of such properties are contaminated with any Hazardous Substance for which the Company or a Company Subsidiary is legally responsible for any unperformed investigation or remediation required by applicable law or any Contract which in the case of (i) or (ii) would reasonably be expected to have a Material Adverse Effect; (c) neither the execution of this Agreement nor the consummation of the Transactions

will require any investigation, remediation, or other action with respect to Hazardous Substances, or any notice to or consent of Governmental Authorities or Third Parties, pursuant to any applicable Environmental Laws or Permits required under Environmental Laws; (d) no Action, investigation, information request or notice has been brought or is pending (or, to the knowledge of the Company, threatened) against the Company or any Company Subsidiary, arising under or related to any Environmental Law or related to any environmental condition, including with respect to any properties currently or formerly owned, leased or operated by the Company or any Company Subsidiary since January 1, 2015 which would reasonably be expected to have a Material Adverse Effect; and (e) there are no above or below ground storage tanks presently in use or formerly used since January 1, 2015 at any properties currently or formerly owned, leased or operated by the Company or any Company Subsidiary. The Company has made available to Purchaser any and all written communications with or documentation from any Governmental Authorities regarding the presence, in violation of Environmental Laws, of Hazardous Substances or any properties currently or formerly owned, leased or operated by the Company or any Company Subsidiary since January 1, 2015 to the date of this Agreement. The Company has also made available to Purchaser all material assessments, reports, data, results of investigations or audits, and other similar information that is in the possession of the Company or the Company Subsidiaries regarding the environmental condition of any properties currently or formerly owned, leased or operated by the Company or any Company Subsidiary, including the compliance (or noncompliance) by the Company and the Company Subsidiaries with any Environmental Laws.

### 3.17 Material Contracts.

(a) Section 3.17(a) of the Disclosure Schedule lists the following types of Contracts, together with all amendments thereto, to which the Company or any Company Subsidiary is a party or by which any of their respective properties, rights or assets are bound as of the date of this Agreement (such Contracts being the “**Company Material Contracts**”):

(i) each Contract that is a “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K of the Exchange Act) (assuming the Company was a registrant subject to the periodic reporting requirements of Section 13(a) of the Exchange Act), other than those agreements and arrangements described in Item 601(b)(10)(iii)(C) with respect to the Company or any Company Subsidiary);

(ii) each Contract the performance of which is reasonably expected to involve annual payments on the part of the Company or any Company Subsidiary, or

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pursuant to which the Company or any Company Subsidiary reasonably expects to receive annual revenue in excess of one million dollars (\$1,000,000) during calendar year 2017 or any subsequent twelve month period;

(iii) all Customer Contracts;

(iv) any Contract with respect to a joint venture, partnership or other similar agreement that involves a sharing of revenues (other than Contracts relating to the payment of customary royalties in an immaterial amount to the Company and the Company Subsidiaries taken as a whole), profits, cash flow or losses with the counterparty thereto;

(v) all employment Contracts or similar Company Benefit Plans of those employees and managers that received from the Company or any Company Subsidiary annual cash compensation (including base salary, commissions, and annual or other periodic or project bonuses) in excess of \$350,000 in fiscal year 2016 and (B) all consulting Contracts or similar Company Benefit Plans for those consultants or independent contractors that received from the Company or any Company Subsidiary annual compensation in excess of \$350,000 in fiscal year 2016;

(vi) all Contracts evidencing Debt involving in excess of \$1,000,000, or which grant a Lien (other than (A) a Permitted Lien or (B) any Liens granted pursuant to any lease of machinery, equipment, motor vehicles, furniture or other personal property) on any assets of the Company or the Company Subsidiaries;

(vii) all Contracts that (i) grant to a Third Party any right of first refusal or first offer or similar right or that limit in material respects, or purport to limit in all material respects, the ability of the Company or any Company Subsidiary or, upon the consummation of the Share Purchase or any other Transactions, Purchaser or any of its subsidiaries to compete with any person or entity or in any geographic area or during any period of time, (ii) contain exclusivity obligations binding on the Company or any Company Subsidiary or, upon the consummation of the Share Purchase or any other Transactions, Purchaser or any of its subsidiaries (excluding by operation of any Contract to which Purchaser or its subsidiaries is a party), or (iii) require the disposition of any material asset or line of business of the Company or any of the Company Subsidiaries or, following the Share Purchase, of Purchaser and its subsidiaries (excluding by operation of any Contract to which Purchaser or its subsidiaries is a party);

(viii) any Contract that is a collective bargaining agreement, work council agreement, work force agreement or any other labor union Contract applicable to persons employed by the Company or any Company Subsidiary;

(ix) all material License Contracts;

(x) all leases for Company Leased Real Property;

(xi) any Contract that is (A) a settlement or similar Contract with any Governmental Authority or (B) an order or consent of any Governmental Authority to

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which the Company or any Company Subsidiary is subject, involving material performance by Company or such Company Subsidiary after the date of this Agreement; and

(xii) any Contract that requires the Company or any Company Subsidiary to provide “most favored nation” pricing terms to the other party to such Contract or any Third Party, including any such Contract that, following the Closing, would apply to Purchaser or any affiliate

of Purchaser (excluding by operation of any Contract to which Purchaser or its subsidiaries is a party).

(b) (i) each Company Material Contract is in all material respects legal, valid and binding with respect to the Company or the relevant Company Subsidiary and is, in all material respects, in full force and effect and enforceable in accordance with its terms with respect to the Company or the relevant Company Subsidiary (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditors generally and general principles of equity governing the availability of equitable remedies); (ii) (A) the Company or any Company Subsidiary, as applicable, is not in material breach of or material default under any Company Material Contract (other than any breach or defaults that the Company or a Company Subsidiary has cured, or that would not be expected to have a Material Adverse Effect) and (B) to the knowledge of the Company, no event or condition exists that, with or without notice, lapse of time, or both, would constitute a default under the Company Material Contract (other than any defaults that would not be expected to have a Material Adverse Effect); and as of the date of this Agreement, none of the Company Material Contracts has been canceled by the other party; (iii) to the knowledge of the Company, no other party is in material breach or violation of, or material default under, any Company Material Contract (other than any material breaches that any other party has cured, or that would not be expected to have a Material Adverse Effect); (iv) as of the date of this Agreement, the Company and the Company Subsidiaries have not received any written claim of default under any Company Material Contract, which has not been cured in accordance with the cure provisions of such Contract; (v) neither the execution of this Agreement nor the consummation of any Transaction shall constitute a default, give rise to cancellation rights, or otherwise adversely affect any of the Company's or the Company Subsidiaries' rights under any Company Material Contract, except for any such defaults, cancellation rights, or adverse effects that, individually or in the aggregate, would not reasonably be expected to (A) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (B) have a Material Adverse Effect and (vi) as of the date of this Agreement, the Company is not involved in any pending disputes regarding such Company Material Contracts, including disputes with respect to the scope thereof, performance thereunder, or payments made or received in connection therewith, except for disputes that would not be expected to have a Material Adverse Effect. The Company has made available to Purchaser true and complete copies of all Company Material Contracts, including any amendments thereto.

### 3.18 Insurance.

(a) The Company and the Company Subsidiaries are insured by insurers believed by the Company to be financially responsible against such losses and risks and in such amounts as are customary in the businesses in which they are engaged.

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(b) With respect to each such insurance policy: (i) the policy is legal, valid, binding and enforceable in accordance with its terms and, except for policies that have expired under their terms in the ordinary course, is in full force and effect in all material respects; (ii) neither the Company nor any Company Subsidiary is in material breach or default (including any such breach or default with respect to the payment of premiums or the giving of notice or both), and, to the knowledge of the Company, no event has occurred that, with notice or the lapse of time, would constitute such a material breach or default, or permit termination or modification, under the policy.

(c) Neither the Company nor any Company Subsidiary received notice with respect to the termination, non-renewal, cancellation, disallowance or reduction in coverage of any such insurance policy and, to the knowledge of the Company, there is no threatened termination, non-renewal, cancellation, disallowance or reduction in coverage with respect to any such policies.

3.19 **Customers.** Section 3.19 of the Disclosure Schedule sets forth the top ten (10) customers of the Company and the Company Subsidiaries (based on revenues during the six (6) months ended June 30, 2017) (the "**Customer Contracts**"). Since December 31, 2016 to the date of this Agreement, neither the Company nor any of the Company Subsidiaries has received any written notice or, to the knowledge of the Company, oral notice from any such customer to the effect that, any such customer (a) requires material and adverse modifications in material terms on which such customer conducts business with the Company or any of the Company Subsidiaries as a condition to continuing such business relationship or (b) is terminating or cancelling its business relationship with the Company or any of the Company Subsidiaries, or making any written threat to terminate or cancel such relationship, except as would not reasonably be expected to (A) prevent or delay beyond the Outside Date the consummation of the Share Purchase or any other Transactions or (B) be material to the Company and the Company Subsidiaries, taken as a whole.

3.20 **Brokers and Expenses.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Company or any Company Subsidiary, except in each case for obligations that will be satisfied in full prior to the Closing and reflected in the Closing Net Cash, with any remaining obligations thereunder being assumed by Seller.

3.21 **Data Protection.** Since January 1, 2015, the Company and the Company Subsidiaries have (i) materially complied with their respective published privacy policies and all applicable Laws relating to protection of personally identifiable information and the privacy and security of personally identifiable information, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), disclosure and use of personally identifiable information (including personally identifiable information of employees, contractors, and Third Parties who have provided information to the Company or the Company Subsidiaries) in the Company's and the Company Subsidiaries' control; and (ii) taken commercially reasonable measures to protect personally identifiable information in Company's and the Company Subsidiaries' control against loss, damage, and unauthorized access, use, and modification. Since January 1, 2015, to the

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knowledge of the Company, there has been no material loss, damage, or unauthorized access, use, or modification of any such information by Company or any Company Subsidiary (or any of their respective employees or contractors). Since January 1, 2015, to the knowledge of the Company, no person (including any Governmental Authority of competent jurisdiction) has commenced any Action with respect to loss, damage, or unauthorized access, use, or modification of any such personally identifiable information in Company's and the Company Subsidiaries' control by Company or any Company Subsidiary (or any of their respective employees or contractors) (and to the knowledge of the Company, there is no reasonable basis for any such Action). To the knowledge of the Company, the execution, delivery and performance of this Agreement and the consummation of the Transactions complies in all material respects with Company's and the Company Subsidiaries' applicable privacy policies and all applicable Laws relating to privacy and data security.

### 3.22 Certain Business Practices.

(a) To the knowledge of the Company, neither the Company, any Company Subsidiary nor any director, officer, employee or agent of the Company or any Company Subsidiary acting on behalf of the Company or any Company Subsidiary (i) has taken any action in material violation of any applicable anticorruption Law, including the U.S. Foreign Corrupt Practices Act (“FCPA”) (15 U.S.C. § 78 dd-1 et seq.) and the UK Bribery Act of 2010 (the “Bribery Act”) or (ii) has directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful payments relating to political activity or (iii) directly or indirectly, used funds, given, offered, promised, or authorized to give, any money or thing of value to any Government Official, for the purpose, with respect to subclauses (ii) and (iii), of influencing an act or decision of the Government Official, inducing such Government Official to or omit to do any act in violation of his or her lawful duty, securing any improper advantage or inducing the Government Official to use his or her influence or position to affect any government act or decision to obtain or retain business of the Company or any Company Subsidiary.

(b) For purposes of this Section 3.22, “Government Official” means: (i) any officer, employee or representative of any regional, federal, state, provincial, county or municipal government or government department, agency, or other division; (ii) any officer, employee or representative of any commercial enterprise that is owned or controlled, or partially owned or controlled, by a government, including any state-owned or controlled medical facility; (iii) any officer, employee or representative of any public international organization, such as the African Union, the International Monetary Fund, the United Nations or the World Bank; (iv) any person acting in an official capacity for any government or government entity, enterprise, or organization identified above; and (v) any political party, party official or candidate for political office.

### 3.23 Export Control and Economic Sanctions Laws.

(a) During the past five (5) years, the Company and each of the Company Subsidiaries has conducted its business in all material respects in accordance with applicable provisions of U.S. economic sanctions and export control laws and regulations, including, without limitation, United States Executive Order 13224, Blocking Property and

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Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act, the International Emergency Economic Powers Act, the Trading with the Enemy Act, the Export Administration Regulations and all economic sanctions laws, including those administered by the United Nations Security Council, the European Union, Her Majesty’s Treasury, the United States Department of the Treasury, the Office of Foreign Assets Control and other applicable export laws of the countries where it conducts business (collectively, the “Sanctions Laws”). Without limiting the foregoing, during the past five (5) years:

(b) None of the Company or any Company Subsidiary, nor, to the knowledge of the Company, any of their respective officers or directors, (i) appears on the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the United States Department of the Treasury; (ii) is otherwise a party with whom, or has its principal place of business or the majority of its business operations (measured by revenues) located in a country in which, transactions are prohibited the Sanction Laws; (iii) has been convicted of or charged with a felony relating to money laundering; (iv) to the knowledge of the Company, is under investigation by any Governmental Authority for money laundering or (v) to the knowledge of the Company, is subject to any pending or threatened (in writing) investigations or claims related to Sanction Laws;

(c) The Company and each Company Subsidiary maintain auditing and monitoring processes and systems of internal controls as part of their compliance programs that are reasonably adequate to ensure compliance with all Laws pertaining to the FCPA, the Bribery Act and the Sanctions Laws.

(d) the Company and each of the Company Subsidiaries has obtained all export licenses, registrations, approvals and other authorizations required for its exports of products, software and technology from the United States and re-exports of products, software and technology subject to U.S. law;

(e) the Company and each of the Company Subsidiaries is in compliance in all material respects with the terms of such applicable export licenses, registrations, approvals or other authorizations;

(f) neither the Company nor any of the Company Subsidiaries has received any written communication alleging that it is not or may not be in compliance with, or has, or may have any, liability under any such applicable export licenses, registrations or other approvals; and

(g) there are no pending or, to the knowledge of the Company, threatened claims against, or audits or investigations of, the Company or any Company Subsidiary with respect to such export licenses, registrations or other approvals.

3.24 **Minute Books.** The Company has made available to Purchaser, true, correct and complete copies in all material respects of the minute books of the

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Company since January 1, 2015. The minute books of the Company contain true and complete originals or copies of all minutes of meetings of, and actions by, the stockholders of the Company and the Company’s board of directors and all committees thereof (or, where such minutes are not final, copies of the most recent drafts of such minutes, with redactions only for matters relating directly to the Share Purchase and the Transactions), and accurately reflect all corporate actions of the Company which are required by applicable Law, the Certificate of Incorporation, the Bylaws or other governing documents to be passed upon by the Company’s board of directors, stockholders and committees. There were no other meetings of, or actions by, the stockholders of the Company, the Company’s board of directors or committees thereof, or draft minutes, that have not been provided to the Purchaser prior to the date of this Agreement.

3.25 **Affiliate Transactions.** There are no existing contracts, transactions, indebtedness or other arrangements, or any related series thereof, between the Company or any of the Company Subsidiaries, on the one hand, and any of the directors, officers or other affiliates of the Company (including Seller and its affiliates and subsidiaries) and the Company Subsidiaries, on the other hand, except for (i) payment

of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, (iii) any agreements with officers or directors and provisions in the Certificate of Incorporation and Bylaws providing for indemnification, exculpation and expense advancement obligations of the Company to such individuals and (iv) other standard employment documentation and employee benefits made generally available to all employees.

3.26 **No Misrepresentations.** None of the representations or warranties (other than Section 3.8(b) and 3.8(c)) made in this Agreement (as modified by the Disclosure Schedule) and any related agreements, certificates and instruments, and none of the information shared with Purchaser by or on behalf of Seller, the Company, or the Company Subsidiaries in the electronic data room maintained by Seller (excluding estimates, projections, forecasts, business plans or cost-related plans that are forward-looking in nature or other forward-looking information) contains any untrue statement of a material fact or omits any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they are or were made, not misleading.

#### 4. **Representations and Warranties of Seller.**

Seller hereby represents and warrants to Purchaser that:

4.1 **Corporate Organization.** Seller is a corporation duly organized, validly existing and, to the extent applicable, in good standing under the laws of the State of Delaware, and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Seller is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing, individually or in the aggregate, would not reasonably be expected to prevent or delay consummation of the Share Purchase or any other

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Transactions beyond the Outside Date or otherwise prevent Seller from performing any of its material obligations under this Agreement.

4.2 **Authority Relative to this Agreement.** Seller has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement by Seller and the consummation by Seller of the Transactions have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the Transactions. This Agreement has been duly and validly executed and delivered by Seller and, assuming due authorization, execution and delivery by Purchaser, constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

#### 4.3 **No Conflict; Required Filings and Consents.**

(a) The execution and delivery of this Agreement by Seller do not, and the performance of this Agreement by Seller will not, (i) conflict with or violate the certificate of incorporation or bylaws or equivalent organizational documents of Seller, (ii) require any material consent, approval authorization or permit of, or filing with or notification to, any Governmental Authority, other than the consents described in Section 3.5(b) and the consents listed in Section 3.5(a) of the Disclosure Schedule, (iii) conflict with or violate in any material respect any Law applicable to Seller or by which any property or asset of Seller is bound or affected or (iv) result in any breach of, or constitute a default (or an event that, with notice or lapse of time or both, would become a default or breach) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any property or asset of Seller pursuant to, or result in the loss of a material benefit under any Contract, permit, franchise or other instrument or obligation to which Seller is a party or by which Seller or any property or asset of Seller is bound or affected, except, with respect to clauses (ii) — (iv), for any such conflicts, violations, breaches, defaults or other occurrences that, individually or in the aggregate, would not prevent or delay consummation of the Share Purchase or any other Transactions beyond the Outside Date or otherwise prevent Seller from performing any of its material obligations under this Agreement.

(b) The execution and delivery of this Agreement by Seller do not, and the performance of this Agreement by Seller will not, require any consent, approval, waiting period termination or expiration, authorization or permit of, or filing with, or notification to, any Governmental Authority, except (i) for applicable requirements, if any, of (x) the Exchange Act, and (y) the HSR Act any other applicable Antitrust Laws, and (ii) where the failure to obtain such consents, approvals, waiting period expirations or terminations, authorizations or permits, or to make such filings or notifications, individually or in the aggregate, would not prevent or delay consummation of the Share Purchase or any other Transactions beyond the Outside Date or otherwise prevent Seller from performing its material obligations under this Agreement.

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4.4 **Title to Shares.** Seller is the legal and beneficial owner of all of the issued and outstanding Company Shares, free and clear of all Liens. Seller is not a party to any option, warrant, purchase right or other contract or commitment that could require Seller to sell, transfer, or otherwise dispose of any Company Shares (other than this Agreement).

4.5 **Solvency.** Immediately after giving effect to the consummation of the Share Purchase and the other Transactions: (i) the sum of the assets, at a fair and fair saleable valuation, of Seller and its subsidiaries (excluding, for the avoidance of doubt, the Company and Company Subsidiaries) exceeds the total amount of their liabilities (including all contingent liabilities); (ii) Seller and its subsidiaries (excluding, for the avoidance of doubt, the Company and Company Subsidiaries) shall not have incurred debts beyond their ability to pay such debts as such debts mature; and (iii) Seller and its subsidiaries (excluding, for the avoidance of doubt, the Company and Company Subsidiaries) shall not have unreasonably small capital with which to conduct their businesses. No transfer of property is being made by Seller and no obligation is being incurred by Seller in connection with the Share Purchase or any other Transactions with the intent to hinder, delay or defraud either present or future creditors of Seller, the Company or any of their respective subsidiaries.



4.6 **Opinion of Financial Advisor.** Prior to and as of Closing, the Seller will have received an opinion from a nationally recognized independent valuation firm reasonably acceptable to Purchaser to the effect that, as of the date thereof and based upon and subject to the various qualifications and assumptions set forth therein (which shall be customary in nature), the Total Share Purchase Consideration to be received by Seller pursuant to the Share Purchase is fair, from a financial point of view, to Seller. The Seller will have delivered a written copy of such opinion to Purchaser prior to or at the Closing.

4.7 **Seller Credit Agreement.** Substantially concurrently with the Closing, the Seller intends to permanently discharge all indebtedness and other Obligations (as defined therein) under the Seller Credit Agreement.

## 5. **Representations and Warranties of Purchaser.**

Purchaser hereby represents and warrants to Seller and the Company that:

5.1 **Corporate Organization.** Purchaser is a limited liability company duly organized, validly existing and, to the extent applicable, in good standing under the laws of the Delaware, and has the requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Purchaser is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing, individually or in the aggregate, would not reasonably be expected to prevent or delay consummation of the Share Purchase or any other Transactions beyond the Outside Date or otherwise prevent Purchaser from performing any of its material obligations under this Agreement.

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5.2 **Authority Relative to this Agreement.** Purchaser has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the Transactions have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of Purchaser are necessary to authorize this Agreement or to consummate the Transactions. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due authorization, execution and delivery by Seller and the Company, constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

### 5.3 **No Conflict; Required Filings and Consents.**

(a) The execution and delivery of this Agreement by Purchaser do not, and the performance of this Agreement by Purchaser will not, (i) conflict with or violate the certificate of incorporation or bylaws or equivalent organizational documents of or Purchaser, (ii) require any material consent, approval authorization or permit of, or filing with or notification to, any Governmental Authority, other than the consents listed in Section 5.3(a) of the Disclosure Schedule, (iii) conflict with or violate any Law applicable to Purchaser or by which any property or asset of Purchaser is bound or affected, or (iv) result in any breach of, or constitute a default (or an event that, with notice or lapse of time or both, would become a default or breach) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any property or asset of Purchaser pursuant to, or result in the loss of a material benefit under any Contract, permit, franchise or other instrument or obligation to which Purchaser is a party or by which Purchaser or any property or asset of Purchaser is bound or affected, except, with respect to clauses (ii) to (iv), for any such conflicts, violations, breaches, defaults or other occurrences that, individually or in the aggregate, would not prevent or delay consummation of the Share Purchase or any other Transactions beyond the Outside Date or otherwise prevent Purchaser from performing any of its material obligations under this Agreement.

(b) The execution and delivery of this Agreement by Purchaser do not, and the performance of this Agreement by Purchaser will not, require any consent, approval, waiting period termination or expiration, authorization or permit of, or filing with, or notification to, any Governmental Authority, except (i) for applicable requirements, if any, of the HSR Act and any other applicable Antitrust Laws, and (ii) where the failure to obtain such consents, approvals, waiting period expirations or terminations, authorizations or permits, or to make such filings or notifications, individually or in the aggregate, would not prevent or delay consummation of the Share Purchase or any other Transactions beyond the Outside Date or otherwise prevent Purchaser from performing its material obligations under this Agreement.

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### 5.4 **Financing.**

(a) At the Closing, assuming the Financing is funded in accordance with the Commitment Letters, Purchaser shall have sufficient cash and other sources of immediately available funds to pay the Total Share Purchase Consideration and all fees and expenses in connection with the Transactions.

(b) Purchaser has delivered to Seller a true, accurate and complete copy of (i) an executed debt commitment letter, dated as of the date of this Agreement, by and among Purchaser and the Lenders party thereto, including all exhibits, schedules, annexes and attachments thereto (as amended, restated, replaced, substituted, supplemented, waived or otherwise modified in accordance with Section 7.9(b) or, in the case of an Alternative Financing, in accordance with Section 7.9(c), the "**Debt Commitment Letter**"), pursuant to which, and subject to the terms and conditions of which, the Lenders party thereto have committed to lend the amounts set forth therein for the purpose of funding the Share Purchase and the other Transactions (such committed debt financing, the "**Debt Financing**"), and (ii) an executed equity commitment letter, dated as of the date of this Agreement, by and among Purchaser and Sponsors, including all exhibits, schedules, annexes and attachments thereto (as amended, restated, replaced, substituted, supplemented, waived or otherwise modified in accordance with Section 7.9(b), (the "**Equity Commitment Letter**" and, together with the Debt Commitment Letter, the "**Commitment Letters**"), pursuant to which, and subject to the terms and conditions of which, each Sponsor has committed to provide the amounts set forth therein for the purpose of funding the Share Purchase (such committed equity financing, the "**Equity Financing**" and, together with the Debt Financing, the "**Financing**").

(c) As of the date of this Agreement, (i) the Commitment Letters are in full force and effect and have not been withdrawn, rescinded or terminated, or otherwise amended or modified in any respect and (ii) each of the Commitment Letters, in the form so delivered, constitutes a legal, valid and binding obligation of Purchaser, and, to the knowledge of Purchaser, the other parties thereto, enforceable against it or them, as the case may be, in accordance with its terms except as may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, and general equitable principles, whether such enforceability is considered in a proceeding in equity or at Law. Except for the fee letter with respect to fees and related arrangements with respect to the Debt Financing (the "**Debt Fee Letter**"), of which Purchaser has delivered a true, accurate and complete copy to Seller on or prior to the date of this Agreement (redacted with respect to fees, pricing caps, and other economic terms that would not affect the amount, availability or conditionality of the Debt Financing), the Limited Guarantee and the Commitment Letters are the only agreements relating to the Financing as of the date of this Agreement. Except for the Commitment Letters and the Debt Fee Letter, there are no agreements, side letters, or arrangements relating to the Debt Commitment Letter or the Equity Commitment Letter, as applicable, that could affect the amount, availability or conditionality of the Debt Financing or the Equity Financing, as applicable.

(d) Assuming the satisfaction of the conditions set forth in Section 8.1 and Section 8.2, as of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of Purchaser under

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any term of the Commitment Letters. As of the date of this Agreement, no Lender party to the Debt Commitment Letter has notified Purchaser of its intention to terminate any of the commitments under the Debt Commitment Letter or not to provide the Debt Financing.

(e) Assuming satisfaction of the conditions in Section 8.1 and Section 8.2, as of the date of this Agreement, Purchaser has no reason to believe that any of the conditions in the Commitment Letters will fail to be satisfied on a timely basis or that the full amounts committed pursuant to the Commitment Letters will not be available to be funded at the Closing. As of the date of this Agreement, Purchaser has fully paid (or caused to be paid) any and all commitment fees or other fees required by the Commitment Letters to be paid on or before the date of this Agreement. The only conditions precedent related to the obligations of the Sponsors to fund the full amount of the Equity Financing and the Lenders to fund the full amount of the Debt Financing are expressly set forth in the Equity Commitment Letter and the Debt Commitment Letter and the Debt Fee Letter, respectively.

5.5 **Absence of Litigation.** As of the date of this Agreement, there is no material Action pending or, to the knowledge of Purchaser, threatened, against Purchaser, any subsidiary of Purchaser, or any property or asset of Purchaser or any subsidiary of Purchaser, before any Governmental Authority of competent jurisdiction that is reasonably likely to prevent or delay the consummation of the Share Purchase or any other Transactions or otherwise prevent or delay Purchaser from performing its material obligations under this Agreement. As of the date of this Agreement, neither Purchaser nor any subsidiary of Purchaser nor any property or asset of Purchaser or any subsidiary of Purchaser is subject to any material continuing order of, consent decree, settlement agreement or similar written agreement with, or, to the knowledge of Purchaser, continuing investigation by, any Governmental Authority of competent jurisdiction, or any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority of competent jurisdiction that is reasonably likely to prevent consummation of the Share Purchase or any other Transactions or otherwise prevent Purchaser from performing its material obligations under this Agreement.

5.6 **Guarantee.** As of the date of this Agreement, Purchaser has delivered to Seller a true, accurate and complete copy of an executed limited guarantee, dated as of the date of this Agreement, from Sponsors in favor of Seller in respect of certain matters on the terms specified therein (the "**Limited Guarantee**"). As of the date of this Agreement, the Limited Guarantee is in full force and effect and has not been withdrawn, rescinded or terminated, or otherwise amended or modified in any respect. The Limited Guarantee, in the form so delivered, constitutes a legal, valid and binding obligation of each Sponsor, enforceable against it in accordance with its terms except as may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, and general equitable principles, whether such enforceability is considered in a proceeding in equity or at Law. As of the date of this Agreement, no event has occurred that, with or without notice, lapse of time or both, would constitute a default or breach on the part of either Sponsor under any term or condition of the Limited Guarantee.

5.7 **Securities Act.** Purchaser is acquiring the Company Shares solely for the purpose of investment and not with a view to, or for sale in

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connection with, any distribution thereof. Purchaser acknowledges that the Company Shares are not registered under the Securities Act, any applicable state securities Laws or any applicable foreign securities Laws, and that such Company Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act or applicable foreign securities Laws or pursuant to an applicable exemption therefrom and pursuant to applicable state securities Laws. Purchaser (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Company Shares and is capable of bearing the economic risks of such investment.

## 6. **Conduct of Business Pending the Closing.**

### 6.1 **Conduct of the Business Pending the Closing.**

(a) Seller and the Company covenant and agree that, from the date of this Agreement until the earlier of (a) the Closing or (b) termination of this Agreement in accordance with its terms, except as contemplated or permitted by this Agreement or required by applicable Laws or any Governmental Authority or with the prior written approval of Purchaser, Seller shall (as it relates to the Company) and the Company shall (and shall cause each Company Subsidiary to), (i) conduct its business in the ordinary course, consistent with past practice and (ii) use its commercially reasonable efforts to keep available the services of the current officers, key employees and consultants of the Company and each Company Subsidiary and to preserve business organizations of the Company and each of Company Subsidiary intact and to maintain existing relations and goodwill with customers, suppliers, contractors, licensors, licensees, partners and other persons with whom the Company or any Company Subsidiary has material business relations.

(b) From the date of this Agreement until the earlier of (1) the Closing or (2) termination of this Agreement in accordance with its terms, except (w) as otherwise expressly required by this Agreement, (x) with the prior written approval of Purchaser, (y) as required by applicable

Law or any Governmental Authority or (z) as set forth in Section 6.1 of the Disclosure Schedule, Seller shall not (as it relates to the Company) and the Company will not (and will not permit any Company Subsidiary to), directly or indirectly:

- (i) amend or otherwise change the Certificate of Incorporation, Bylaws or equivalent organizational documents of the Company or any Company Subsidiary;
- (ii) issue, sell, pledge, dispose of, grant or encumber or make subject to a Lien (other than a Permitted Lien), or authorize the issuance, sale, pledge, disposition, grant or encumbrance of, any shares of any class of capital stock of the Company or any of the Company Subsidiaries, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock, or any other ownership interest, of the Company or any of the Company Subsidiaries;
- (iii) transfer, lease, sell, pledge, license, dispose of, abandon, allow to lapse, subject to a Lien (other than a Permitted Lien) or otherwise encumber any

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material assets or properties of the Company or any of the Company Subsidiaries, except the license of Company Products in the ordinary course of business;

- (iv) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of the Company's or any Company Subsidiary's capital stock (other than dividends or distributions made by a Company Subsidiary to the Company or another Company Subsidiary);
- (v) reclassify, combine, split, subdivide or redeem, or purchase or otherwise acquire, directly or indirectly, any of the Company's or any Company Subsidiary's capital stock;
- (vi) (A) acquire, directly or indirectly (including by merger, consolidation, or acquisition of stock or assets or any other business combination) in one transaction or any series of related transactions, any corporation, partnership, other business organization or any division thereof or any other business, or any equity interest in any person; (B) incur any Debt; (C) make any loans, advances or capital contributions, except for employee loans or advances for expenses and extended payment terms for customers, in each case subject to applicable Law and only in the ordinary course of business; (D) make or direct to be made any capital investments or equity investments in any entity, other than investments in any wholly-owned Company Subsidiary; or (E) enter into or amend any Contract with respect to any matter set forth in this Section 6.1(b)(vi);
- (vii) make, authorize, or make any commitment with respect to any capital expenditure that (A) has not been set forth in the Company's or the Company Subsidiaries' annual budget, and (B) is collectively, in the aggregate for the Company and the Company Subsidiaries taken as a whole, in excess of \$500,000 during any three (3)-month period;
- (viii) make or change any material Tax election, adopt or change any accounting period or any material accounting method with respect to Taxes, file any amended material Tax Return, enter into any closing agreement with respect to material Taxes, settle any material Tax claim or assessment relating to the Company or any of the Company Subsidiaries, surrender any right to claim a material refund of Taxes, consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment relating to the Company or any of the Company Subsidiaries, destroy or dispose of any books and records with respect to Tax matters relating to periods beginning before the Closing and for which the statute of limitations is still open or under which a record retention agreement is in place with a Governmental Authority;
- (ix) commence any material Action or settle any material claim, arbitration or other Action that would (x) materially affect the operations of the Company or any Company Subsidiary or (y) result in the Company or any Company Subsidiary being subject to any equitable relief or admission of wrongdoing; provided that Seller may enter into settlements without admitting liability or wrongdoing, and involving only money damages for which Seller (and not the Company or any Company Subsidiary) is solely responsible);

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- (x) (A) terminate any Material Company Contract, (B) enter into a new Contract that would be a Material Company Contract if entered into prior to the date hereof, in each case other than in the ordinary course of business consistent with past practice or (C) modify in any material respect any payment terms with any customers or suppliers pursuant to any Material Company Contract;
- (xi) except as required by a Company Benefit Plan (as in effect on the date hereof) or applicable law: (A) modify any compensation or benefits provided to any of the Continuing Employees; (B) enter into any employment, change of control, severance or retention agreement with any Continuing Employee; (C) establish, adopt, enter into, terminate or amend any Company Benefit Plan or any employee plan, trust, fund, policy or arrangement for the benefit of any Continuing Employees or any of their beneficiaries; (D) take any action to accelerate the vesting or payment of, or otherwise fund or secure the payment of, any compensation or benefits payable or to be provided to any Continuing Employee under any Company Benefit Plan; or (E) enter into or amend any collective bargaining agreement or other agreement with a labor union, works council or similar organization covering Continuing Employees;
- (xii) (A) promote, demote, or terminate the employment of any Continuing Employee (other than terminations for cause (as such term may be defined in the applicable employment agreement, services agreement or Company Benefit Plan)), (B) assign or transfer the employment of any Continuing Employee out of the Company, (C) take any action to cause any employee who does not meet the definition of a Continuing Employee on the date of this Agreement to transfer employment to Purchaser or (D) take any action to prevent any employee who meets the definition of a Continuing Employee on the date of this Agreement from transferring employment to Purchaser;
- (xiii) enter into or amend any Contract pursuant to which any other party is granted, or that otherwise subjects the Company or any Company Subsidiary or Purchaser or any of its subsidiaries to, any non-competition or other exclusive rights of any type or scope that materially restrict the Company or any Company Subsidiary or, upon completion of the Share Purchase or any other Transactions, Purchaser or any of its subsidiaries, from engaging or competing in any line of business or in any location;

(xiv) enter into any Contracts (A) under which Company or any Company Subsidiary grants or agrees to grant to any Third Party any assignment, license, release, immunity or other right with respect to any Owned Company Intellectual Property other than pursuant to agreements substantially in the form of the Company's or the Company Subsidiaries' standard agreements, (B) under which Company or any Company Subsidiary establishes with any Third Party a joint venture, strategic relationship, or partnership pursuant to which Company agrees to develop or create (whether jointly or individually) any material Intellectual Property, products or services; (C) that will cause or require (or purport to cause or require) the Purchaser (other than pursuant to Contracts to which the Purchaser or its affiliates are Parties) to (x) grant to any Third Party any license, covenant not to sue, immunity or other right with respect to or under any of the Intellectual Property or Intellectual Property Rights of Purchaser or its affiliates; or (y) be obligated to pay any royalties or other amounts to any Third Party;

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(xv) enter into any material lease, material sublease or material license for real property or material operating lease of the Company or any of the Company Subsidiaries involving in excess of \$1,000,000 per annum in the aggregate;

(xvi) enter into or materially amend or otherwise modify any Contract or arrangement with persons that are affiliates or are executive officers or directors of the Company, except as otherwise permitted or required by this Agreement;

(xvii) terminate, cancel, amend or modify any insurance coverage policy maintained by the Company or any of the Company Subsidiaries that is not simultaneously replaced by a comparable amount of insurance coverage;

(xviii) fail to make capital expenditures necessary to operate the business of the Company and the Company Subsidiaries in the ordinary course of business consistent with past practice (provided that for clarity, no acceleration of the ordinary capital expenditure cycle will be required pursuant to this clause (xviii));

(xix) make any material change in any of its present financial accounting methods and practices of the Company or the Company Subsidiaries other than changes as may be required to conform to GAAP or applicable Law;

(xx) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company (other than the Share Purchase); or

(xxi) otherwise make a legally binding commitment to do any of the foregoing.

6.2 **Cash and Debt Management.** Notwithstanding anything herein to the contrary, it is understood and agreed as follows:

(a) prior to the Closing, Seller and the Company may cause the transfer or sweep of the Company's cash and cash equivalents (including Restricted Cash) and marketable securities to Seller or its affiliates, with the intention that the Company Closing Cash be as close to zero as reasonably practicable; and

(b) prior to the Closing, each of Seller and the Company shall use its reasonable best efforts to cause the Debt of the Company and the Company Subsidiaries to be extinguished in its entirety, with the intention that the Company Closing Debt be as close to zero as reasonably practicable.

## 7. **Additional Agreements.**

### 7.1 **Access to Information; Confidentiality.**

(a) Upon reasonable prior notice, and in compliance with applicable Laws, from the date hereof until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller shall (as it relates to the Company) and the Company shall, and

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each shall cause the Company Subsidiaries and the officers, directors, employees, auditors and agents of Seller, the Company and the Company Subsidiaries to, afford the officers, employees and other Representatives of Purchaser reasonable access at all reasonable times to the officers, employees, agents, properties, offices and other facilities, books and records of Seller (as it relates to the Company), the Company and each Company Subsidiary, including the Owned Company Intellectual Property, and shall furnish Purchaser with such financial, operating and other data and information (including the work papers of the Company's accountants) as Purchaser, through its officers, employees and other Representatives, may reasonably request as long as these actions are in compliance with all applicable data privacy/protection Laws; provided, that such disclosure shall not be required to include any information that is subject to a statutory non-disclosure or similar provision or agreement with a Governmental Authority, prime contractor, higher-tier subcontractor, distributor, or other Third Party for end-use by a Governmental Authority (collectively, "**Governmental Contracting Parties**"), or that is subject to an attorney-client privilege or other legal privilege, or that is subject to a non-disclosure agreement with a Third Party. If requested by Purchaser, the Company agrees to use its reasonable best efforts to (i) provide Purchaser's outside counsel such information so as to summarize and share its findings (but not the underlying information) with Purchaser and (ii) secure the consent of the appropriate Governmental Contracting Party or other Third Party to permit disclosure of such protected information to Purchaser.

(b) All information obtained by Purchaser pursuant to this Section 7.1 shall be held confidential in accordance with the confidentiality agreement between Purchaser and Seller, dated May 19, 2017 (the "**Confidentiality Agreement**").

(c) To the extent consistent with applicable Law, the Company shall consult with Purchaser in good faith on a regular basis as reasonably requested by Purchaser to report material (individually or in the aggregate) operational developments, the status of relationships with customers

and potential customers, the status of ongoing operations and other matters reasonably requested by Purchaser, including the continued accuracy of the Company's representations and warranties and compliance with the Company's covenants and obligations under this Agreement.

(d) The Company may, as it deems advisable and necessary in its reasonable judgment, designate any competitively sensitive materials provided under this Section 7.1 as "outside counsel only." Such materials and the information contained therein shall be given only to outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient without the advance written consent of the Company.

(e) From and after the Closing Date, except as otherwise expressly provided in this Agreement, Seller shall hold and shall cause its subsidiaries to hold in strict confidence and not to disclose, release or use without the prior written consent of Purchaser, any and all confidential and proprietary information related to the businesses of the Company and Company subsidiaries; provided, that Seller may disclose, or may permit disclosure of, such information (i) to its Representatives who have a need to know such information and are informed of their obligation to hold such information confidential to the same extent as is applicable to Seller and in respect of whose failure to comply with such obligations Seller will be

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responsible, (ii) if Seller, its subsidiaries or their respective Representatives are required to disclose any such information pursuant to applicable Law or pursuant to the applicable rules and regulations of any national securities exchange applicable to listed companies, or (iii) in connection with the enforcement of any right or remedy relating to this Agreement or the Transactions. Notwithstanding anything to the contrary in the foregoing, in the event that any demand or request for disclosure of such confidential and proprietary information is made pursuant to clause (ii) above, Seller shall to the extent practicable and permissible promptly notify Purchaser of the existence of such request or demand and shall provide Purchaser a reasonable opportunity to seek an appropriate protective order or other remedy, and in the event such protective order or other remedy is not obtained, Seller may disclose such confidential and proprietary information without liability hereunder, but shall furnish only that portion of such confidential and proprietary information that Seller is advised by legal counsel it is legally required to disclose and shall exercise reasonable efforts, at its sole cost and expense, to preserve the confidentiality of such information.

(f) From and after the Closing Date, except as otherwise expressly provided in this Agreement, Purchaser shall hold and shall cause its subsidiaries (including the Company and Company Subsidiaries) to hold in strict confidence and not to disclose, release or use without the prior written consent of Seller, any and all confidential and proprietary information related to the businesses of Seller (other than the businesses of the Company and Company Subsidiaries); provided, that Purchaser may disclose, or may permit disclosure of, such information (i) to its Representatives who have a need to know such information and are informed of their obligation to hold such information confidential to the same extent as is applicable to Purchaser and in respect of whose failure to comply with such obligations Purchaser will be responsible, (ii) if Purchaser, its subsidiaries or their respective Representatives are required to disclose any such information pursuant to applicable Law or pursuant to the applicable rules and regulations of any national securities exchange applicable to listed companies, or (iii) in connection with the enforcement of any right or remedy relating to this Agreement or the Transactions. Notwithstanding anything to the contrary in the foregoing, in the event that any demand or request for disclosure of such confidential and proprietary information is made pursuant to clause (ii) above, Purchaser shall to the extent practicable and permissible promptly notify Seller of the existence of such request or demand and shall provide Seller a reasonable opportunity to seek an appropriate protective order or other remedy, and in the event such protective order or other remedy is not obtained, Purchaser may disclose such confidential and proprietary information without liability hereunder, but shall furnish only that portion of such confidential and proprietary information that Purchaser is advised by legal counsel it is legally required to disclose and shall exercise reasonable efforts, at its sole cost and expense, to preserve the confidentiality of such information.

## 7.2 Solicitation of Transactions.

(a) From the date hereof and continuing until the earlier of the Closing or the termination of this Agreement in accordance with the terms hereof, Seller, the Company and the Company Subsidiaries shall not, and shall cause their respective Representatives not to, directly or indirectly, (i) solicit, initiate, support, knowingly encourage or knowingly facilitate any Acquisition Proposal or the making thereof to Seller or the Company; (ii) enter into, maintain, continue or otherwise participate in any discussions or negotiations regarding, or

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furnish any non-public information to any person (other than Purchaser and its Representatives) with respect to any Acquisition Proposal; or (iii) allow Seller, the Company or any of the Company Subsidiaries to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, share purchase agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar Contract constituting or related to, any Acquisition Proposal.

(b) Seller and the Company will immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any persons conducted prior to or on the date of this Agreement with respect to any Acquisition Proposal. Seller or the Company shall (i) promptly (and in any event within two (2) business days) advise Purchaser orally and in writing of the receipt of any Acquisition Proposal (including for the avoidance of doubt any request for information or other inquiry which Seller or the Company would reasonably expect to lead to an Acquisition Proposal), including the material terms and conditions of such Acquisition Proposal (including any changes thereto) and the identity of the person making such Acquisition Proposal and attaching a copy of any such written Acquisition Proposal and (ii) keep Purchaser reasonably informed on a timely basis of the status of, and any material modification to, any such Acquisition Proposal, except (and solely to the extent) such notification and/or disclosure is prohibited by the terms of a confidentiality agreement to which Seller or the Company is a party as of the date of this Agreement.

## 7.3 Employee Benefits Matters.

(a) If so directed by Purchaser in writing at least five (5) business days prior to the Closing Date, the Company's board of directors will adopt (and will cause any other sponsor of the applicable Company Benefit Plan to adopt), at least two (2) business days prior to the Closing Date, resolutions terminating any and all Company Benefit Plans intended to qualify as a qualified cash or deferred arrangement under Section 401(k) of the Code, effective no later than the day immediately preceding the date the Company becomes a member of the same controlled group of corporations (as defined in Section 414(b) of the Code) as Purchaser. The form and substance of such resolutions shall be subject to the reasonable approval of Purchaser, and the Company shall provide Purchaser evidence that such resolutions have been adopted by the board of directors of the Company or any of the Company

Subsidiaries or any other applicable Company Benefit Plan sponsor, as applicable. The Company shall take such other actions in furtherance of terminating any such 401(k) plans as Purchaser may reasonably request.

(b) If so directed by Purchaser in writing at least five (5) business days prior to the Closing Date, and provided that the Company is legally entitled to act unilaterally, the Company shall notify (or coordinate with any other applicable parties to notify) any Third Party involved in the administration or operation of each applicable Company Benefit Plan set forth on Schedule 7.3(b) of the Disclosure Schedule Plan) of its intent to terminate any Continuing Employees' participation in such Company Benefit Plan. Such termination shall occur as soon as administratively practicable subject to any contractual obligations of the Company with respect to such Company Benefit Plan.

(c) During the one (1)-year period immediately following the Closing Date, Purchaser shall, or shall cause the Company and/or their respective subsidiaries to provide

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the Continuing Employees with substantially comparable (i) base salary and target annual bonus opportunities as was provided to such Continuing Employee prior to the Closing and (ii) with severance benefits that are no less favorable than the severance benefits to which such Continuing Employee would have been entitled with respect to such termination under the Company Benefit Plans that are severance policies of Seller, the Company and the Company Subsidiaries or that are employment agreements covering Company Employees as in effect immediately prior to the Closing Date, which Company Benefit Plans are set forth on Section 7.3(c)(ii) of the Disclosure Schedule and have been provided to Purchaser prior to the date of this Agreement, provided that this undertaking shall not obligate Purchaser to continue the employment of such Continuing Employees for any period following the Closing, and such Continuing Employees may be terminated by Purchaser at any time (except to the extent otherwise restricted by Law and subject to any Company Benefit Plans that are contractual arrangements between the Company and any individual employee, as in effect on the date hereof and as set forth on Section 7.3(c)(ii) of the Disclosure Schedule and have been provided to Purchaser prior to the date of this Agreement). In addition, Purchaser will be responsible for paying the Continuing Employees the 2017 bonus following year-end in the ordinary course and in amounts consistent with what is accrued immediately prior to Closing and incurred between the Closing Date and year-end.

(d) Through December 31st of the year in which the Closing occurs, Purchaser shall, or shall cause the Company and/or their respective subsidiaries to provide the Continuing Employees with the types and levels of employee benefits (excluding cash and equity-based long-term incentive opportunities) that are, in the aggregate, substantially comparable to the types and levels of employee benefits (excluding cash and equity-based long-term incentive opportunities) provided to such Continuing Employees immediately prior to the Closing Date (such benefits to be provided pursuant to the "**Purchaser Plans**," which for the avoidance of doubt may include the Company Benefit Plans, to the extent such Company Benefit Plans are assumed by Purchaser).

(e) For all purposes of the Purchaser Plans, including vesting, eligibility to participate, vacation accrual and levels of benefits (but not benefit accruals under any defined benefit plan or frozen benefit plan of Purchaser or vesting under any equity incentive plan) under any Purchaser Plan, Purchaser will credit each Continuing Employee with his or her years of service with the Company before the Closing, to the same extent as such Continuing Employee was entitled, before the Closing, to credit for such service under any comparable Company Benefit Plan in which such Continuing Employee participated or was eligible to participate immediately prior to the Closing; provided that the foregoing will not apply to the extent that its application would result in any duplication of benefits with respect to the same period of service. In addition, Purchaser will use commercially reasonable efforts, subject in each case to receipt of any required consent of the applicable Purchaser Plan provider, to cause (i) each Continuing Employee to be immediately eligible to participate, without any waiting time, in any and all Purchaser Plans, (ii) for purposes of each Purchaser Plan providing medical, dental, pharmaceutical and/or vision benefits to any Continuing Employee, all pre-existing condition exclusions and actively-at-work requirements of such Purchaser Plan to be waived for such Continuing Employee and his or her covered dependents, to the extent such conditions were inapplicable or waived under the comparable Company Benefit Plans in which such Continuing Employee participated immediately prior to the Closing, and (iii) for the plan year in which the

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Closing occurs, the crediting of each Continuing Employee with any co-payments and deductibles paid prior to the Closing in satisfying any applicable deductible or out-of-pocket requirements under any Purchaser Plan.

(f) Purchaser will cause the Company to, honor, in accordance with their terms the executive agreements listed on Section 7.3(f) of the Disclosure Schedule following the Closing.

(g) Nothing in this Agreement shall (x) create any third-party beneficiary rights in any employee or former employee (including any beneficiary or dependent thereof) or service provider or former service provider (including any beneficiary or dependent thereof) of Seller, the Company or any Company Subsidiary in any respect, including in respect of continued employment (or resumed employment), or create any such rights in any such persons in respect of any benefits that may be provided, directly or indirectly, under any plan or any employee or service provider program or arrangement of Purchaser or any of its subsidiaries (including any Company Benefit Plan of the Company prior to the Closing), or (y) constitute or be construed to constitute an amendment to any of the compensation or benefit plans maintained for or provided to employees or other persons on, prior to or following the Closing. Nothing in this Agreement shall constitute a limitation on the rights to amend, modify or terminate any such plans or arrangements of Purchaser or any of its subsidiaries (including any Company Benefit Plan of the Company or any Company Subsidiary).

7.4 **Notification of Certain Matters.** The Company shall give prompt notice to Purchaser in writing of: (i) any representation or warranty made by the Company contained in this Agreement becoming untrue or inaccurate such that the conditions set forth in Section 8.2(a) would not reasonably be expected to be satisfied; (ii) any failure of the Company to comply with any covenant or agreement to be complied with by it under this Agreement such that the conditions set forth in Section 8.2(a), would not reasonably be expected to, be satisfied; (iii) the occurrence or existence of any Effect that, individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect. Seller shall give prompt notice to Purchaser in writing of: (i) any representation or warranty made by Seller contained in this Agreement becoming untrue or inaccurate such that the conditions set forth in Section 8.2(b) would not reasonably be expected to be satisfied; or (ii) any failure of Seller to comply with any covenant or agreement to be complied with by it under this Agreement such that the conditions set forth in Section 8.2(b) would not reasonably be expected to be satisfied. Purchaser shall give prompt notice to Seller and the Company in writing of: (i) any representation or warranty made by Purchaser contained in this

Agreement becoming untrue or inaccurate such that the conditions set forth in Section 8.3(a) would not reasonably be expected to be satisfied; or (ii) any failure of Purchaser to comply with any covenant or agreement to be complied with by it under this Agreement such that the conditions set forth in Section 8.3(a) would not reasonably be expected to be satisfied.

7.5 **Litigation.** Each party hereto shall promptly notify the other parties of any action, suit, proceeding or investigation that shall be instituted or threatened in writing against such party to restrain, prohibit or otherwise challenge the legality of or seek damages in connection with this Agreement or the Share Purchase or any other Transactions. The Company shall give prompt notice to Purchaser in writing of any Action

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relating to or involving or otherwise affecting the Company or any Company Subsidiaries or Seller and any of its affiliates, as the case may be, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to any Section of this Agreement or that relate to the consummation of the Transactions. The Company shall give Purchaser the opportunity to participate at Purchaser's expense in (but not control) the defense or settlement of any claims against the Company or any of its directors relating to this Agreement or the Transactions. Seller and the Company shall not settle any litigation against the Company, any Company Subsidiary or Seller relating to this Agreement or the Share Purchase without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned, it being understood that if such settlement would affect the Company or Company Subsidiaries following the Closing (other than customary confidentiality provisions in settlement agreements), Purchaser may instead withhold or condition its consent in its sole discretion).

7.6 **Regulatory Approvals; Efforts.**

(a) The parties hereto shall cooperate with each other and use their respective reasonable best efforts to take, or cause to be taken, all reasonable actions, and to do, or cause to be done, all reasonable things necessary, proper or advisable under any applicable Laws to (i) consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions.

(b) The parties shall provide or cause to be provided (including by their "ultimate parent entities" as that term is defined in the HSR Act or any similar term under any other Antitrust Laws) as promptly as practicable to any Governmental Authority information and documents requested by such Governmental Authority to permit consummation of the Transactions, including (i) filing any notification and report form and related material required under the HSR Act as promptly as practicable, but in no event later than five (5) business days after the date hereof; (ii) filing any notification required under any other Antitrust Law as promptly as practicable, but in no event later than five (5) business days after the date hereof; and (iii) complying with any "second request" for information under the HSR Act and any comparable request under any other Antitrust Law. Purchaser shall, with the Seller's and the Company's reasonable assistance, prepare and file any notification required under any foreign Antitrust Law.

(c) In furtherance and not in limitation of the foregoing, if and to the extent necessary to avoid any impediment under any Antitrust Law to the Closing on or before the Outside Date, the parties shall use reasonable best efforts to obtain any consent, authorization, approval, order, waiting period expiration or termination, or exemption by, any Governmental Authority, necessary to be obtained prior to the Closing, and to prevent the entry, enactment, or promulgation of any preliminary or permanent injunction or other order, decree, or ruling that would adversely affect the ability of the parties to consummate the Transaction, including by (i) defending through litigation any claim asserted under the Antitrust Laws in any court with respect to the Transactions by any Governmental Authority or other third party; (ii) offering, proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such businesses, equity holdings, product lines or assets of the Purchaser or the Company and/or their respective affiliates, and (iii)

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otherwise taking or committing to take actions that after the Closing Date would limit Purchaser's freedom of action with respect to one or more businesses, investments, product lines, or assets of Purchaser or the Company and/or their respective affiliates; provided, however, that Purchaser shall not be required to take or agree or commit to take any action, including any agreement to divest or restrict its freedom after the Closing Date with respect to any businesses, product lines, or assets of the Company and its respective affiliates, if such action, individually or in the aggregate, would be reasonably likely to be materially adverse to Purchaser or its affiliates or the Company or its affiliates (with materiality for purposes of this provision measured in relation to the Company); provided, further, that any action contemplated by this Section 7.7(c) shall be conditioned upon the Closing occurring.

(d) Subject to applicable confidentiality restrictions or restrictions required by Law or by any Governmental Authority, Purchaser, on the one hand, and Seller and the Company, on the other, shall each (i) provide to the other parties copies of all filings and submissions made by such Party (and its advisers) and all substantive correspondence between it (or its advisers) and any Governmental Authority or third party, relating to the Transactions; (ii) permit authorized representatives of the other to attend any meeting, communication, or conference with any Governmental Authority related to the Transactions; and (iii) promptly advise each other upon receiving any communication from any Governmental Authority or third party whose consent is required for consummation of any of the Transactions relating to any such consent or approval. Notwithstanding anything in the foregoing to the contrary, the parties may, as they deem advisable and necessary, redact or otherwise limit their disclosures to the other parties (A) to remove references concerning the valuation of the Company or other competitively sensitive information, (B) as necessary to comply with contractual arrangements or regulatory requirements, and (C) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns. The parties may also designate any competitively sensitive materials provided to the other parties under this Section 7.6 as "outside counsel only," in which case such materials and the information contained therein shall be given only to outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient without the advance written consent of the party providing such materials.

(e) Notwithstanding anything in this Section 7.6 to the contrary, the parties hereto acknowledge that Purchaser or its designee will control and direct, and Seller and the Company shall cooperate reasonably, subject to applicable Law, with such direction and control, regarding the filings (including where to file), strategies, process, negotiation of settlements (if any), and related proceedings contemplated by this Section 7.6, including for the avoidance of doubt the marketing or sale of any part of the Company's businesses or assets related thereto; provided, however, that Purchaser or its designee shall consult in advance with Seller and the Company in good faith with regard to such filings, strategies, processes, negotiation of settlements (if

any), and related proceedings, and shall take reasonable account of any suggestions, arguments, or other input provided by Seller or the Company in making any decisions regarding the same.

7.7 **Further Assurances.** Each party hereto, at the reasonable request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be reasonably necessary for effecting the

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consummation of this Agreement and the Transactions. In addition, from and after the Closing, with respect to any claims for indemnification or expense advancement from a Covered Person (as defined in the Prior Merger Agreement) or Indemnified Party (as defined in the Prior Merger Agreement) contemplated by Section 6.10 of the Prior Merger Agreement, Purchaser shall reasonably cooperate with Seller to cause the D&O “tail” insurance policy contemplated by said Section 6.10 to satisfy such claims; provided, that Seller agrees that Seller is at all times responsible for such claims (subject to the terms, conditions and limitations set forth in said Section 6.10).

7.8 **Public Announcements.** No press release or public announcement, statement or disclosure concerning the Share Purchase or any other Transaction shall be issued by either party without the prior consent of the other party, except as such release or announcement may be required by Law, including the rules or regulations of any U.S. or non-U.S. securities exchange, in which case the party required to make the release or announcement shall use its reasonable efforts to allow the other party reasonable time to comment on such release or announcement in advance of such issuance.

7.9 **Financing.**

(a) Subject to the terms and conditions of this Agreement, Purchaser shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or advisable to arrange and obtain the proceeds of the Financing on the terms and conditions (including, to the extent required, any “flex” provisions) described in the Commitment Letters and the Debt Fee Letter, including using its reasonable best efforts to:

(i) maintain in effect the Commitment Letters;

(ii) negotiate and enter into definitive financing agreements with respect to the Debt Financing on the terms and conditions contained in the Debt Commitment Letter (the “**Financing Agreements**”);

(iii) taking into account the expected timing of the Marketing Period, satisfy, or cause its respective Representatives to satisfy, on a timely basis (or, in each case, if reasonably required to obtain the Financing, seek the waiver of), all conditions to the Financing contemplated by the Commitment Letters, the Debt Fee Letter and Financing Agreements that are within its control (including by paying any commitment fees or other fees or deposits required by the Debt Fee Letter or any other fee letters relating to the Debt Commitment Letter);

(iv) comply with its obligations under the Commitment Letters to the extent the failure to comply with such obligations would materially adversely impact the amount or timing of the Financing or the availability of the Financing prior to the Closing Date; and

(v) if available sources of cash are not otherwise available to consummate the Transactions, and provided that the Marketing Period has ended and that all of the conditions set forth in Section 8.1 and Section 8.2 have been satisfied or waived (other than those other conditions that by their terms are to be satisfied on the Closing Date, but subject to

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such conditions being able to be satisfied on the Closing Date), enforce its rights under the Commitment Letters.

(b) Purchaser shall not agree to or permit any amendment, supplement, termination, modification or replacement of, or grant any waiver of, any condition, remedy or other provision under any Commitment Letter, Debt Fee Letter or Financing Agreement without the prior written consent of Seller if such amendment, supplement, termination, modification, replacement or waiver would (i) reduce the aggregate amount of the Financing from that contemplated by the Commitment Letters delivered as of the date hereof to an amount that, together with available cash or other funds of Purchaser and its subsidiaries, would on the Closing Date be less than the amount required to consummate the Transactions, (ii) impose any new or additional conditions or otherwise expand, amend or modify any of the conditions to the receipt of the Financing in a manner that would reasonably be expected to make the funding of any portion of the Financing (or satisfaction of any condition to obtaining any portion of the Financing) less likely to occur in any material respect or (iii) adversely affect in any material respect the ability of Purchaser to enforce its rights against the other parties to the Debt Commitment Letter or the Financing Agreements (it being understood and agreed that, in any event, Purchaser may, without the consent of Seller, amend the Debt Commitment Letter to add lenders, arrangers, bookrunners, agents, managers or similar entities that have not executed the Debt Commitment Letter as of the date of this Agreement and amend the economic and other arrangements with respect to the existing and additional lenders, arrangers, bookrunners, agents, managers or similar entities). Purchaser shall promptly notify Seller of any such amendment, supplement, modification, replacement or waiver and deliver a copy thereof to Seller. Upon the effectiveness of any such amendment, supplement, modification, replacement or waiver, references herein to “Debt Commitment Letter”, “Equity Commitment Letter” and “Commitment Letters”, as applicable, shall include and mean such documents as amended, supplemented, modified, replaced or waived in compliance with this Section 7.9(b), and references to “Debt Financing”, “Equity Financing” and “Financing”, as applicable, shall include and mean the financing contemplated by the applicable Commitment Letter as amended, supplemented, modified, replaced or waived in compliance with this Section 7.9(b), as applicable.

(c) In the event that all or any portion of the Debt Financing becomes unavailable on the terms and conditions (including, to the extent required, any “flex” provisions) in the Debt Commitment Letter or the Debt Commitment Letter shall be withdrawn, terminated, repudiated or rescinded for any reason, Purchaser shall (i) promptly notify Seller and (ii) use its reasonable best efforts to arrange and obtain, as promptly as reasonably practicable following the occurrence of such event, and to negotiate and enter into definitive agreements with respect to, alternative financing from the same or alternative sources (the “**Alternative Financing**”) on terms and conditions (including, to the extent required, the flex provisions) not less favorable in the aggregate to Purchaser than those contained in the Debt Commitment Letter (after taking into account any flex provisions) and in an amount sufficient, when



taken together with other sources of immediately available funds at the Closing, to consummate the Transactions (or replace any unavailable portion of the Debt Financing), and to obtain a new financing commitment letter (including any associated engagement letter and related Debt Fee Letter) with respect to such Alternative Financing (collectively, the “**New Commitment Letter**”), copies of which (redacted, in the case of any such Debt Fee Letter, with respect to fees, pricing caps and other economic

terms that would not affect the amount, availability or conditionality of the Alternative Financing) shall be promptly provided to Seller. In the event any Alternative Financing is obtained and a New Commitment Letter is entered into in accordance with this Section 7.9(c), references herein to (A) “Debt Commitment Letter” shall be deemed to include and mean any New Commitment Letter to the extent then in effect, (B) “Commitment Letters” shall be deemed to include and mean the Commitment Letters to the extent not superseded by a New Commitment Letter, as the case may be, at the time in question and any New Commitment Letter to the extent then in effect, and (C) “Debt Financing” and “Financing” shall include and mean the financing contemplated by the Debt Commitment Letter and Commitment Letters, in each case, as modified pursuant to the preceding clauses (A) and (B).

(d) Purchaser shall furnish Seller substantially final drafts (when available) and true and complete executed (upon execution) copies of the Financing Agreements, in each case, upon Seller’s reasonable request. Purchaser shall (i) give Seller prompt notice of any default or breach by any party to any of the Commitment Letters or the Financing Agreements of which Purchaser has knowledge, if such default or breach would result in a material delay of or limit the availability of the Financing and (ii) otherwise keep Seller reasonably informed of the status of Purchaser’s efforts to arrange the Financing (or any Alternative Financing). Without limiting the generality of the foregoing, Purchaser shall give Seller prompt notice (A) of the receipt by Purchaser of any written notice or other written communication, in each case from any Lender with respect to (x) any default under or breach of any provisions of the Commitment Letters or Financing Agreements by Purchaser or any withdrawal, termination, repudiation or rescission of any of the Commitment Letters or Financing Agreements by any Lender party thereto or (y) any material dispute or disagreement between or among parties to any of the Commitment Letters or Financing Agreements with respect to the obligation to fund the Financing or the amount of the Financing to be funded at the Closing Date, in each case, that would make the funding of the Financing (or satisfaction of the conditions to obtaining the Financing) materially less likely to occur or materially delay the availability of the Financing, and (B) if at any time for any reason Purchaser believes that it will not be able to obtain all or any portion of the Financing on the terms and conditions, in the manner or from the sources, contemplated by any of the Commitment Letters or Financing Agreements or will be unable to obtain Alternative Financing. Purchaser shall promptly provide any information reasonably requested by Seller relating to any circumstance referred to in clause (A) or (B) of the immediately preceding sentence. Notwithstanding the foregoing or any other provision hereof, Purchaser shall not be required to provide or disclose any information that Purchaser believes would jeopardize attorney-client privilege of Purchaser or its subsidiaries or that is requested for purposes of litigation.

(e) Notwithstanding anything to the contrary in this Agreement, nothing contained in this Section 7.9 shall require, and in no event shall the reasonable best efforts of Purchaser require, Purchaser to (i) seek the Equity Financing from any source other than the Sponsors, or in any amount in excess of that contemplated by, the Equity Commitment Letter or (ii) pay any fees in excess of those contemplated by the Equity Commitment Letter, the Debt Commitment Letter or the Debt Fee Letter (including, to the extent required, the flex provisions contained therein).

(f) Purchaser acknowledges and agrees that neither the obtaining of the Financing or any Alternative Financing is a condition to the Closing, and reaffirms its obligation to consummate Transactions irrespective and independently of the availability of the Financing or any Alternative Financing, subject to the applicable conditions set forth in Article 8.

#### 7.10 Financing Cooperation.

(a) Seller and the Company shall, and shall cause each Company Subsidiary to, and shall use their respective reasonable best efforts to cause their and each Company Subsidiary’s Representatives to, provide all cooperation, as may be reasonably requested by Purchaser, to assist Purchaser in causing the conditions to the Debt Commitment Letter to be satisfied and as is otherwise reasonably requested by Purchaser in connection with arranging and obtaining the Debt Financing (provided that such requested cooperation is consistent with applicable Law and does not unreasonably interfere with the ongoing operations of Seller, the Company or any Company Subsidiary), including:

(i) preparing and furnishing Purchaser and the Lenders as promptly as practicable the financial statements and other financial data required to satisfy the conditions set forth in paragraph 7 of Exhibit D of the Debt Commitment Letter (provided that the Company shall not be required to actually prepare any pro forma financial information or pro forma financial statements, but the Company shall assist Purchaser in connection with the preparation of pro forma financial information and pro forma financial statements) (the information referred to in this clause (i) being referred to as the “**Required Information**”);

(ii) causing Seller’s and the Company’s management team (including senior management) to assist in preparation for and to participate in a reasonable number of meetings, presentations, due diligence sessions, road show presentations and bank information memoranda and other drafting sessions with Lenders, potential lenders and rating agencies at reasonable times and upon reasonable advance notice;

(iii) using reasonable best efforts to cause the Company’s external auditors to provide assistance and cooperation to Purchaser, including participating in drafting sessions and accounting due diligence sessions, assisting in the preparation of any pro forma financial statements referred to in clause (i) above, and providing any necessary and customary “comfort letters”;

(iv) assisting Purchaser and the Lenders in the preparation of Debt Marketing Documents (and any supplements thereto), including by promptly providing customary information to be included in any Debt Marketing Documents (including, subject to Seller and the Company having been given a reasonable opportunity to review and comment on any such Debt Marketing Documents, customary authorization letters to the Lenders for the Debt Financing authorizing the distribution of information to prospective lenders or investors and containing a customary representation that such information does not contain a material misstatement or omission and containing a representation that the public side versions of such documents, if any, do not include material nonpublic information about Seller, the Company, their respective subsidiaries or their securities);

(v) reasonably cooperating with the marketing efforts of Purchaser and the Lenders in connection with the Debt Financing, including direct contact between senior management of Seller and the Company and potential lenders in the Debt Financing and using reasonable best efforts to ensure any syndication and marketing efforts benefit from the existing lending and investment banking relationships of Seller and the Company;

(vi) taking all corporate and other actions, subject to the occurrence of the Closing, to permit the consummation of the Debt Financing and the proceeds thereof to be made available to Purchaser at the Closing;

(vii) reasonably assisting Purchaser in obtaining any corporate credit and family ratings from any ratings agencies contemplated by the Debt Commitment Letter, including assisting Purchaser and the Lenders in the preparation of customary materials for rating agency presentations;

(viii) furnishing to Purchaser and its financing sources documents reasonably required by Purchaser or its financing sources relating to the repayment of any existing indebtedness of the Company and/or any Company Subsidiary, and the release of guarantees incurred, and liens granted, by the Company and/or any Company Subsidiary in respect of any existing indebtedness of Seller or its affiliates;

(ix) causing the Company and the Company Subsidiaries (A) to assist in the preparation of, and to execute and deliver, any pledge and security documents, credit agreements, indentures, guarantees, ancillary documents and instruments, hedging agreements, closing certificates and other documents related to the Debt Financing (including delivery of a certificate of the chief financial officer (or other officer with reasonably equivalent responsibilities) of the Company with respect to solvency matters in the form set forth as an annex to the Debt Commitment Letter), in each case, subject to the occurrence of the Closing, (B) to provide information required by, and otherwise assist in the preparation of, schedules thereto as may be reasonably requested by Purchaser and (C) otherwise to facilitate the pledging of collateral and the granting of security interests in respect of the Debt Financing;

(x) using reasonably best efforts to deliver original stock certificates, original stock powers and other equity instruments (together with appropriate original powers relating thereto) and original promissory notes (together with appropriate original note allonges relating thereto) to the Lenders on the Closing Date;

(xi) taking customary ministerial company actions, subject to and only effective upon the occurrence of the Closing, reasonably requested by Purchaser to permit the consummation of the Debt Financing;

(xii) updating any Required Information provided to Purchaser and the Lenders as may be necessary so that the Required Information (A) is Compliant and (B) meets the applicable requirements set forth in the definition of "Required Information", and providing Purchaser prompt notice of any Required Information ceasing to be Compliant; and

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(xiii) at least three (3) business days prior to the Closing Date, providing all documentation and other information about the Company and the Company Subsidiaries as is reasonably requested in writing by Purchaser at least eight (8) days prior to the Closing in connection with the Debt Financing that relates to applicable "know your customer" and anti-money laundering rules and regulations including without limitation the USA PATRIOT Act.

(b) Notwithstanding anything in this Agreement to the contrary, (i) neither Seller, the Company (except with respect to any authorization letter delivered pursuant to clause (a)(iv) above) nor any Company Subsidiary shall be required to pay any commitment or other similar fee or enter into any binding agreement or commitment or incur any other actual or potential liability or obligation in connection with the Debt Financing (or any Alternative Financing) that is not subject to the occurrence of the Closing, (ii) no director, manager, officer or employee of Seller, the Company or any Company Subsidiary shall be required to deliver any certificate or take any other action pursuant to Section 7.10 to the extent any such action would reasonably be expected to result in personal liability to such director, manager, officer or employee, and (iii) none of Seller, the Company, any of the Company Subsidiaries or any of their respective directors or officers shall be obligated to adopt resolutions or execute consents to approve or authorize the execution of the Debt Financing (or any Alternative Financing), provided that this clause (iii) shall not prohibit the adoption or execution of any resolutions or consents effective no earlier than the Closing Date by any persons that shall remain or will become officers or directors of the Company or any of the Company Subsidiaries as of the Closing. Seller and the Company hereby consent to the use of the Company's and the Company Subsidiaries' trademarks and logos in connection with the Debt Financing; provided, that such trademarks and logos are used solely in a manner that is not intended, or reasonably likely, to harm or disparage the Company or the reputation or goodwill of the Company.

(c) Purchaser shall, promptly upon request by Seller, reimburse Seller for all reasonable and documented out-of-pocket expenses incurred by Seller, the Company, the Company Subsidiaries and its and their respective Representatives in connection with their respective obligations pursuant to Section 7.10(a). Purchaser shall indemnify and hold harmless Seller, the Company, the Company Subsidiaries and their respective Representatives, from and against any and all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, suffered or incurred by any of them in connection with the Financing or any Alternative Financing and any information supplied or provided in connection therewith (except (i) to the extent suffered or incurred as a result of the bad faith, gross negligence, willful misconduct or material breach of this Agreement by Seller, the Company, any Company Subsidiary or any Representative thereof, in each case as determined by a court of competent jurisdiction or (ii) with respect to any information provided by Seller, the Company or any Company Subsidiary in connection with satisfying the conditions set forth in paragraph 7 of Exhibit D of the Debt Commitment Letter). Notwithstanding anything contained herein or otherwise, the parties hereby acknowledge and agree that Purchaser shall not be required to make any payment under this Section 7.10(c) prior to the earlier to occur of the Closing or the termination of this Agreement.

(d) In the event the Closing occurs after November 15, 2017 (as a result of a material breach by Purchaser of its covenants under this Agreement, or as a result of

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delay by the Lenders that constitutes a breach by the Lenders or is related to a breach by Purchaser of its covenants under this Agreement), Purchaser shall, promptly upon request by Seller following Closing, reimburse Seller, in an aggregate amount not to exceed \$5 million, for any amendment, consent, or waiver fee that Seller is required to pay the lenders under the Credit Agreement, dated as of January 19, 2017, among Seller, the lenders party thereto, and Goldman Sachs Bank USA, as administrative agent (as amended by the First Amendment and Limited Waiver to Credit Agreement dated July 19, 2017, the “**Seller Credit Agreement**”) as consideration for such lenders’ agreement to extend the Waiver Termination Date (as defined in the Seller Credit Agreement) thereunder; provided, that, in no event shall the reimbursement pursuant to this Section 7.10(d) be payable in the event that Closing fails to occur, or is delayed as a result of delay in obtaining regulatory approvals under the HSR Act or any other Antitrust Law.

#### 7.11 Tax Matters.

(a) All state and local transfer, sales, filing, recordation, use, stamp, registration or other similar Taxes and fees resulting from the transactions contemplated by this Agreement (“**Transfer Taxes**”) shall be borne fifty percent (50%) by Seller and fifty percent (50%) by Purchaser. The parties shall cooperate to pay such Transfer Taxes when due and file all necessary Tax Returns and other documentation with respect to such Transfer Taxes as required by applicable Law.

(b) In the case of any real property Taxes, personal property Taxes or any similar ad valorem Taxes or other periodic Tax attributable to the Company or the Company Subsidiaries that are in respect of any Taxable period commencing on or before the Closing Date and that ends after the Closing Date (a “**Straddle Period**” and such a Tax, “**Straddle Period Tax**”), any such Straddle Period Taxes shall be prorated between Purchaser and Seller on a per diem basis with Seller responsible for such Straddle Period Tax attributable to the period ending on the Closing Date and Purchaser responsible for such Straddle Period Tax attributable to the period commencing after the Closing Date. Straddle Period Taxes shall be timely paid as provided in Section 7.11(d), and subject to Section 7.11(d), all Tax Returns with respect thereto shall be filed, as provided by applicable Law. With respect to other Taxes of the Company and the Company Subsidiaries that are in respect of a Straddle Period, the Taxes shall be allocated between the Purchaser and Seller based on a closing of the books at the end of the Closing Date. The paying party shall be entitled to prompt reimbursement from the non-paying party in accordance with this Section 7.11(b).

(c) Seller shall prepare or cause to be prepared, in a manner consistent with past practice, and timely file or cause to be timely filed all Tax Returns of the Company and the Company Subsidiaries for any taxable period ending on or before the Closing Date (a “**Pre-Closing Tax Period**” and such Tax Returns, “**Pre-Closing Tax Returns**”). With respect to any Pre-Closing Tax Returns required to be filed after the Closing Date (other than consolidated, combined, or unitary Tax Returns), Seller shall provide a final copy of such Tax Return to Purchaser no less than twenty (20) calendar days (or as soon as reasonably practicable in the case of non-income Tax Returns) prior to the due date for filing such Tax Return (taking into account any applicable extensions), along with the Taxes shown as due on such Tax Return (except to the extent such Taxes were either (i) included as a liability in the calculation of Company Closing

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Net Working Capital or (ii) remitted to Purchaser in accordance with its indemnification rights set forth in Section 10.2 of this Agreement), and Purchaser shall thereafter cause the Company or the Company Subsidiaries, as the case may be, to execute and timely file such Tax Returns and shall timely remit the Taxes shown as due on such Pre-Closing Tax Return. Purchaser shall not amend, or cause or permit the Company or any of the Company Subsidiaries to amend, any Pre-Closing Tax Return of the Company or any of the Company Subsidiaries without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed). With respect to taxes for which Seller is responsible pursuant to this Section 7.11(c), all refunds or credits of such taxes, as well as all refunds or credits attributable to Transaction Tax Deductions, received (or realized by way of a reduction of taxes otherwise payable) by Purchaser or any of its affiliates (including, after the Closing, the Company and the Company Subsidiaries) shall be for the account of Seller and shall promptly be paid by Purchaser to Seller (net of any Taxes in respect of the receipt or accrual of such refund or credit).

(d) Purchaser shall prepare or cause to be prepared any Tax Returns of the Company and the Company Subsidiaries for a Straddle Period (“**Straddle Period Tax Returns**”) and shall provide copies of such Tax Returns to Seller no less than twenty (20) calendar days (or as soon as reasonably practicable in the case of non-income Tax Returns) prior to the due date for filing such Tax Returns (taking into account any applicable extensions). Seller shall have the right to review and comment on such Straddle Period Tax Returns, and Purchaser shall not unreasonably refuse to reflect in such Tax Returns any comments requested by Seller with respect to such Tax Returns. Purchaser shall not file such Tax Returns without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that in no event shall Purchaser be prevented from timely filing any such Tax Return (taking into account any applicable extensions). Seller shall remit to Purchaser the Taxes shown as due on such Tax Returns that are allocable to Seller (as determined in accordance with Section 7.11(b)) (except to the extent such Taxes were either (i) included as a liability in the calculation of Company Closing Net Working Capital or (ii) remitted to Purchaser in accordance with its indemnification rights set forth in Section 10.2 of this Agreement). Purchaser shall thereafter cause the Company and the Company Subsidiaries to execute and timely file such Straddle Period Tax Returns and shall timely remit the Taxes shown as due on such Straddle Period Tax Returns. Purchaser shall not amend, or cause or permit the Company or any of the Company Subsidiaries to amend, any Straddle Period Tax Returns without the prior written consent of Seller (which consent will not be unreasonably withheld, conditioned or delayed).

(e) Purchaser and Seller shall each promptly notify the other in writing upon the receipt of notice from any Tax Authority of any pending or threatened audit or administrative or judicial proceeding related to taxes (a “**Tax Proceeding**”) of the Company or any of the Company Subsidiaries for any Pre-Closing Tax Period or any Straddle Period. Seller shall have the sole right to control any Tax Proceeding with respect to the Company or any of the Company Subsidiaries for any Pre-Closing Tax Period; provided, however, that Seller (1) shall keep Purchaser reasonably informed with respect to any such Tax Proceeding that relates solely to the Company and the Company Subsidiaries and (2) will not settle, compromise or abandon any such Tax Proceeding without obtaining Purchaser’s prior written consent (which consent will not be unreasonably withheld, conditioned or delayed), if such settlement, compromise or abandonment would have a material adverse impact on or otherwise bind the Purchaser or any of

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its affiliates in a taxable period ending after the Closing Date. Purchaser shall have the right to control any Tax Proceeding with respect to the Company or any of the Company Subsidiaries for any Straddle Period; provided, however, Purchaser (1) shall keep Seller reasonably informed with respect to any such Tax Proceeding, (2) shall consult with Seller before taking any significant action in connection with such Tax Proceeding, (3) shall permit Seller to participate, at Seller's expense, in the conduct of such Tax Proceeding, and (4) shall not settle, compromise or abandon any such Tax Proceeding without obtaining Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(f) To the extent relevant to the Company, each party shall (i) provide the other with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any Tax Proceeding and (ii) retain for the longer of the applicable statute of limitations or at least six years following the Closing Date and provide the other with all records or other information that may be relevant to the preparation of any Tax Returns or the conduct of any Tax Proceeding.

(g) No elections will be made under Section 338(g) or Section 338(h)(10) of the Code (or any corresponding or similar provision of state or local law) with respect to the Share Purchase. Neither the Company nor any Company Subsidiary will make any other elections on or after the Closing Date that would be effective for any Pre-Closing Period.

(h) On or before the Closing Date, Seller shall deliver to Purchaser a duly executed certificate of non-foreign status, dated as of the Closing Date, substantially in the form of the sample certification set forth in Treasury Regulation Section 1.1445-2(b)(2)(iv)(B).

(i) All Tax sharing, allocation, or similar agreements or arrangements in effect prior to the Closing Date (other than this Agreement, any such agreement solely among the Company and the Company Subsidiaries and any indemnification provisions for Taxes contained in credit agreements, leases or other commercial agreements the primary purposes of which do not relate to Taxes), and all liabilities and obligations in connection thereto, between Seller or any of its affiliates (other than the Company and the Company Subsidiaries), on the one hand, and the Company and the Company Subsidiaries, on the other hand, shall cease and terminate as of the Closing Date as to all past, present and future periods. After the Closing Date, no party shall have any rights or obligations under any such agreements.

#### 7.12 Post-Closing Access to Books and Records.

(a) After the Closing, for a period of seven (7) years after the Closing Date, upon receipt of reasonable prior notice, each party agrees to provide, or cause to be provided, to each other, as soon as reasonably practicable after written request therefor and at the requesting party's sole expense, reasonable access during normal business hours, to the other party's employees (without substantial disruption of employment) and to any books, records, documents, instruments, accounts, correspondence, writings, evidences of title and other papers relating to the conduct of the businesses of the Company and Company Subsidiaries on or before the Closing Date (the "**Books and Records**"), to the extent reasonably available and in the possession or under the control of the other party that the requesting party reasonably needs (i) to

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comply with reporting, disclosure, filing or other requirements imposed on the requesting party (including under applicable securities Laws) by a Governmental Authority having jurisdiction over the requesting party, (ii) for use in any other judicial, regulatory, administrative or other proceeding, or in order to satisfy Tax, audit, accounting, claims, regulatory, litigation or other similar requirements; provided, that, if Seller or any of its subsidiaries, on the one hand, and Purchaser or any of its affiliates (including the Company and the Company Subsidiaries post-Closing), on the other hand, are adverse parties in a litigation, nothing herein shall require either party to disclose any information within the scope, or related to the subject matter, of such litigation (iii) in connection with the filing of any Tax Return or election or any amended return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes or any Tax audit or other Tax Proceeding, (iv) to comply with its obligations under this Agreement or (v) in connection with any other matter requiring access to any such employees, books, records, documents, files and correspondence of the other party, solely to the extent necessary for Purchaser's operation of the businesses of the Company and Company Subsidiaries after Closing or Seller's operation of its other businesses, as the case may be; provided, however, that no party shall be required to provide access to or disclose information where such access or disclosure would violate any Law or agreement, or waive any attorney-client or other similar privilege, and each party may redact information regarding itself or its subsidiaries or otherwise not relating to businesses of the Company and Company Subsidiaries, and, in the event such provision of information could reasonably be expected to violate any Law or agreement or waive any attorney-client or other similar privilege, the parties shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence, provided, further, Purchaser shall have no obligations pursuant to this Section 7.12 following a sale by Purchaser of its ownership interest in the Company Shares (provided Purchaser has exercised commercially reasonable efforts to cause the buyer of such Company Shares to assume such obligations).

(b) Any information owned by a party that is provided to a requesting party pursuant to this Section 7.12 shall be deemed to remain the property of the providing party. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such information.

7.13 **Insurance.** Purchaser acknowledges that the policies and insurance coverage maintained by Seller for the benefit of the businesses of the Company and Company Subsidiaries are part of the corporate insurance program maintained by Seller, and such coverage will not be available or transferred to Purchaser, except as provided for in the Services Agreement. From and after the Closing Date, the Company and Company Subsidiaries shall cease to be insured by Seller's corporate insurance policies or by any of its self-insured programs; provided, however that to the extent permitted under the applicable insurance programs (for clarity, excluding any self-insurance programs), Purchaser shall continue to be insured under such insurance programs for any claims related to pre-Closing occurrences and may request that Seller make claims under such policies and programs with respect to losses occurring (whether known or unknown) before the Closing Date to the extent insurance programs in respect of such claims may be available, and Seller shall take such actions as may be reasonably requested by Purchaser in connection with the tendering of such claims to the applicable insurers under such insurance programs and shall provide Purchaser with the net proceeds they realize with respect to such claims; provided, further, that Purchaser agrees to

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reimburse upon the request of Seller any deductibles under the insurance policies and programs resulting directly from such claims; provided, further, that in the event that otherwise insured losses under a particular insurance program attributable to the aforementioned claims by Purchaser and attributable to other

claims by Seller and its subsidiaries exceed the coverage limit under such insurance program, then Purchaser and Seller shall each be responsible for any uncovered losses on a pro rata basis (according to the relative amounts of otherwise insured losses). Seller may, to be effective at the Closing, amend any such corporate insurance policies in the manner it deems appropriate to give effect to this Section 7.13; provided that neither Seller nor any of its affiliates may take any action that would reduce, modify or eliminate any coverage, terms and conditions or policy limits to the detriment of the Company under any insurance program (for clarity, excluding any self-insurance program) presently available to the Company for any claims related to pre-Closing occurrences. From and after the Closing, Purchaser shall be responsible for, and Seller shall reasonably cooperate with Purchaser in, securing all insurance it considers appropriate for its operation of the businesses of the Company and Company Subsidiaries, except as otherwise provided in the Services Agreement. Purchaser covenants and agrees not to seek to assert or to exercise any rights or claims of the businesses of the Company and Company Subsidiaries under or in respect of any past or current corporate insurance policy of Seller for post-Closing occurrences, except as otherwise provided in the Services Agreement.

#### 7.14 Guarantees.

(a) Purchaser recognizes that Seller and certain of its affiliates have provided credit support to the Company and Company Subsidiaries pursuant to guarantees, letters of credit, bonds, sureties and other credit support or assurances provided by Seller or its affiliates in support of any obligation of the businesses of the Company and Company Subsidiaries (the “**Business Guarantees**”) set forth on Schedule 7.15 of the Disclosure Schedule and that Seller may supplement Schedule 7.15 of the Disclosure Schedule from time to time prior to Closing to include (at Seller’s cost) any additional Business Guarantees entered into after the date of this Agreement in the ordinary course of business. Purchaser shall use its reasonable best efforts to obtain from the respective beneficiary, in form and substance reasonably satisfactory to Seller, on or before the Closing Date, valid and binding written releases of Seller and its subsidiaries (other than the Company and Company Subsidiaries), as applicable, from any liability on or after the Closing Date, under any Business Guarantees listed on Schedule 7.15 of the Disclosure Schedule (as supplemented, at Seller’s cost, prior to the Closing Date), which release shall be effective as of the Closing, including, as applicable, by providing substitute guarantees, furnishing letters of credit or making other arrangements as may be reasonably acceptable to Purchaser. If any such Business Guarantee has not been released as of the Closing Date, then Purchaser shall continue to use its reasonable best efforts after the Closing to cause as promptly as possible the complete and unconditional release of Seller and its affiliates under such Business Guarantee. Notwithstanding anything to the contrary herein, the parties acknowledge and agree that at any time on or after the Closing Date, Seller and its affiliates may, in such person’s sole discretion, take any action to terminate, obtain release of or otherwise limit their liability under any and all such outstanding Business Guarantees. Purchaser shall, and hereby agrees to, indemnify and hold harmless Seller and its subsidiaries from and after the Closing for any amounts required to be paid under any Business Guarantees.

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(b) With respect to any guarantees, letters of credit, bonds, sureties and other credit support or assurances (“**Company Guarantees**”) provided by the Company or any of the Company Subsidiaries in support of any obligation of the businesses of Seller and its Subsidiaries (other than the Company and or any of the Company Subsidiaries), Seller shall use its reasonable best efforts to obtain from the respective beneficiary, in form and substance reasonably satisfactory to the Purchaser, on or before the Closing Date, valid and binding written releases of the Company and the Company Subsidiaries, as applicable, from any liability on or after the Closing Date, under any such Company Guarantees, which release shall be effective as of the Closing, including, as applicable, by providing substitute guarantees, furnishing letters of credit, or making other arrangements as may be reasonably acceptable to Seller. If any such Company Guarantees have not been released as of the Closing Date, then Seller shall continue to use its reasonable best efforts after the Closing to cause as promptly as possible the complete and unconditional release of the Company, the Company Subsidiaries, and their respective affiliates under such Company Guarantees. Notwithstanding anything to the contrary herein, the parties acknowledge and agree that at any time on or after the Closing Date, Purchaser, the Company, the Company Subsidiaries, and their respective affiliates may, in such person’s sole discretion, take any action to terminate, obtain release of or otherwise limit their liability under any and all such outstanding Company Guarantees. Seller shall, and hereby agrees to, indemnify and hold harmless Purchaser, the Company, and the company Subsidiaries from and after the Closing for any amounts required to be paid under any such Company Guarantees.

7.15 **Services.** Prior to the Closing, the parties shall cooperate in good faith and use reasonable best efforts to finalize the form of, and schedules to, a services agreement to be entered into at the Closing between the Seller and the Purchaser (the “**Services Agreement**”) related to the provision of Shared Services by the Seller or a subsidiary of the Seller to the Company or applicable Company Subsidiary (or vice versa) that will provide for an orderly operation of the business of the Company and the Company Subsidiaries on a stand-alone basis, and will include at Purchaser’s option, at a minimum, Shared Services that are being provided to the Company and the Company Subsidiaries, as of the date of this Agreement, including those identified in Section 7.15 of the Disclosure Schedules. As used herein, “**Shared Services**” means corporate or shared services or assets provided to, or in support of the businesses of the Company and Company Subsidiaries, that are general corporate or other overhead services or assets, and/or that are provided to or used by both the businesses of the Company and Company Subsidiaries and the other businesses of Seller and its subsidiaries, which may include, as the parties shall negotiate in good faith, access to and use of computer hardware and software related to any business function, travel and entertainment services, temporary labor services, office supplies (including copiers, scanners and fax machines), telecommunications equipment and services, logistics services, fleet services, energy/utilities services, procurement and supply arrangements, treasury services, accounting and finance services, public relations, legal and risk management services, workers’ compensation arrangements, internal audit services, human resources and employee relations management services, employee benefits services, credit, collections and account payable services, property management services, environmental support services and customs and excise services, in each case including services relating to the provision of access to information, operating and reporting systems and databases and all hardware and software or other technology used in connection therewith.

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7.16 **Transaction Expenses.** At or prior to the Closing, the Company shall pay (or Seller will assume in writing) all fees, expenses, costs and payments (whether accrued, billed or invoiced on or prior to Closing) to be paid or incurred in connection with the Share Purchase and other Transactions (“**Transaction Expenses**”) which are incurred by or on behalf of the Company and the Company Subsidiaries on or prior to the Closing (if any).

7.17 **Shared Contracts.** Prior to or at the Closing, each Shared Contract to which Seller or one of its subsidiaries or affiliates (other than the Company or the Company Subsidiaries), on the one hand, and the Company or any of the Company Subsidiaries, on the other hand, is a party shall be assigned in part, or appropriately amended, so that the other party shall be entitled to the rights and benefits, and shall assume the related portion of any liabilities, that relate to its business; provided, however, that, in no event shall any assignment or amendment be required with respect to any Shared Contract which is not unilaterally assignable or cannot be unilaterally amended by its terms (it being understood, however, that:

(i) Seller shall use its reasonable best efforts to take, or cause to be taken, all actions and use its reasonable best efforts to do, or cause to be done, and assist and cooperate with the Company and the Company Subsidiaries in doing, all things reasonably necessary, proper or advisable to obtain such assignment or amendment of any such Shared Contract, including paying any reasonable fees or payments to the counter party to any such Shared Contract in order to obtain its consent to assignment or amendment. Seller shall cooperate with Purchaser regarding, reasonably consider all comments made by Purchaser on, and consult with Purchaser prior to making any material decision or taking any material action relating to any Shared Contracts.

## 8. Conditions to the Closing.

8.1 **Mutual Conditions.** The obligations of each of Purchaser, Seller and the Company to consummate the Share Purchase and take the other actions required to be taken by it at the Closing are subject to the fulfillment or satisfaction, as of the Closing, of each of the following conditions (it being understood that any one or more of the following conditions may be waived by Purchaser, Seller or the Company, as applicable, in a writing signed by Purchaser, Seller or the Company, as applicable):

(a) No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law, rule, regulation, executive order or decree, judgment, injunction, ruling or other order, whether temporary, preliminary or permanent (collectively, “**Order**”), that is then in effect and has the effect of preventing or prohibiting or making illegal consummation of the Share Purchase or other Transactions.

(b) All applicable waiting periods (or any extensions thereof) under the HSR Act shall have been terminated or shall have expired and all approvals under other applicable Antitrust Laws shall have been obtained.

8.2 **Conditions to Obligations of Purchaser.** The obligations of Purchaser to consummate the Share Purchase and take the other actions required to be taken by it at the Closing are subject to the fulfillment or satisfaction, as of the Closing, of

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each of the following conditions (it being understood that any one or more of the following conditions may be waived by Purchaser in a writing signed by Purchaser):

(a) The representations and warranties of the Company set forth in Article 3 (other than Sections 3.1(a), 3.3(a), 3.4, 3.6(b), and 3.20 (the “**Company Fundamental Representations**”)), taken together, disregarding all qualifications contained therein regarding materiality or Material Adverse Effect (except for Section 3.9(b) which shall be read as written), shall be true and correct, in each case on and as of the date of this Agreement and on and as of the Closing with the same force and effect as if they had been made on the Closing Date (except for any such representations or warranties that by their terms speak only as of a specific date or dates, in which case such representations and warranties shall be tested only on and as of such specified date or dates), except to the extent that the failure of such representations and warranties to be true and correct, in the aggregate, would not reasonably be expected to have a Material Adverse Effect with respect to the Company. The Company Fundamental Representations, disregarding all qualifications contained therein regarding materiality or Material Adverse Effect, and the representations and warranties of the Company set forth in Section 3.6(a) and 3.26 shall be true and correct in all but *de minimis* respects on and as of the date of this Agreement and as of the Closing with the same force and effect as if they had been made on the Closing Date (except for any such representations or warranties that by their terms speak only as of a specific date or dates, in which case such representations and warranties shall be tested only on and as of such specified date or dates). The Company shall have performed and complied in all material respects with all of its covenants contained in Article 6 and Article 7 at or before the Closing (to the extent that such covenants require performance by the Company before the Closing). At the Closing, Purchaser shall have received a certificate as to the foregoing executed on behalf the Company by the Company’s Chief Executive Officer.

(b) The representations and warranties of Seller set forth in Article 4, (other than Sections 4.1, 4.2, 4.4, 4.5 and 4.6 (the “**Seller Fundamental Representations**”) taken together, disregarding all qualifications contained therein regarding materiality or Material Adverse Effect, shall be true and correct, in each case on and as of the date of this Agreement and on and as of the Closing with the same force and effect as if they had been made on the Closing Date (except for any such representations or warranties that by their terms speak only as of a specific date or dates, in which case such representations and warranties shall be tested only on and as of such specified date or dates), except to the extent that the failure of such representations and warranties to be true and correct, in the aggregate, would not reasonably be expected to individually or in the aggregate, materially impair Seller’s ability to timely effect the Transactions contemplated hereby. The Seller Fundamental Representations, disregarding all qualifications contained therein regarding materiality or Material Adverse Effect, shall be true and correct in all but *de minimis* respects on and as of the date of this Agreement and on and as of the Closing with the same force and effect as if they had been made on the Closing Date (except for any such representations or warranties that by their terms speak only as of a specific date or dates, in which case such representations and warranties shall be tested only on and as of such specified date or dates). Seller shall have performed and complied in all material respects with all of its covenants contained in Article 6 and Article 7 at or before the Closing (to the extent that such covenants require performance by Seller at or before the Closing). At the Closing, Purchaser shall have received a certificate to the foregoing executed on behalf of Seller by an officer of Seller.

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(c) There shall not have occurred any Material Adverse Effect with respect to the Company since the date of this Agreement. At the Closing, Purchaser shall have received a certificate to the foregoing executed on behalf of Seller by an officer of Seller.

(d) Purchaser shall have received the resignations of those managers, directors and officers of the Company designated by Purchaser in writing to Seller at least three (3) business days prior to the Closing Date.

(e) Seller or its applicable affiliate shall have executed and delivered the Services Agreement.

(f) Seller shall have received, and delivered to Purchaser, a solvency opinion, addressed to Seller (and either addressed to Purchaser or upon which Purchaser shall be permitted to rely), rendered by Duff & Phelps, LLC or a similar nationally recognized solvency firm, reasonably acceptable to Purchaser and in a form and substance reasonably acceptable to Purchaser, to the effect that the statements in Section 4.5 are true.

(g) Seller shall have received, and delivered to Purchaser, the opinion specified in Section 4.6.

(h) Purchaser is satisfied, in its reasonable discretion, that no regulatory or other governmental development (excluding under the HSR Act or other applicable Antitrust Laws) affecting the Company, the Company Subsidiaries, or the Company's affiliates or their respective officers, employees or directors, would reasonably be likely to cause an adverse effect on the Company or the Company Subsidiaries following Closing or Purchaser or its affiliates following Closing, including with respect to the expected benefits of the Share Purchase or any other Transaction to Purchaser and its affiliates (the "**Disclosure Condition**").

(i) Purchaser shall have received the Closing Financial Certificate from the Company.

**8.3 Conditions to Obligations of Seller and the Company.** The obligations of each of Seller and the Company to consummate the Share Purchase and take the other actions required to be taken by it at the Closing are subject to the fulfillment or satisfaction, as of the Closing, of each of the following conditions (it being understood that any one or more of the following conditions may be waived by Seller or the Company, as applicable, in a writing signed by Seller or the Company, as applicable):

(a) The representations and warranties of Purchaser set forth in this Agreement shall be true and correct (disregarding all qualifications contained therein regarding materiality or Material Adverse Effect) in each case on and as of the date of this Agreement and on and as of the Closing with the same force and effect as if they had been made on the Closing Date (except for any such representations or warranties that by their terms speak only as of a specific date or dates, in which case such representations and warranties shall be tested only on and as of such specified date or dates), except where the failure to be so true and correct would not reasonably be expected to prevent or delay beyond the Outside Date Purchaser's ability to consummate the Transactions. Purchaser shall have performed and complied in all material

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respects with all of its covenants contained in Article 6 and Article 7 at or before the Closing (to the extent that such covenants require performance by Purchaser at or before the Closing). At the Closing, Seller shall have received a certificate to the foregoing executed on behalf of Purchaser by an officer of Purchaser.

(b) Purchaser shall have executed and delivered the Services Agreement.

## **9. Termination.**

**9.1 Termination.** This Agreement may be terminated and the Share Purchase and other Transactions may be abandoned at any time prior to the Closing Date:

(a) By mutual written consent of Purchaser and Seller; or

(b) By either Purchaser or Seller, if:

(i) the Closing Date shall not have occurred on or before the date that is ninety (90) days following the date hereof (the "**Outside Date**"); provided, however, that the right to terminate this Agreement under this Section 9.1(b)(i) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the substantial or primary cause of the failure of the Closing Date to occur on or before such date; or,

(ii) any Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Order or other Law that (x) makes payment for the Company Shares illegal or otherwise prohibited, or (y) enjoins Purchaser from paying for the Company Shares pursuant to this Agreement, and, in each case, such Order or Law shall have become final and non-appealable;

(c) By Purchaser, if (i) there is an inaccuracy in the Company's representations herein, or a breach by the Company of its covenants herein, in either case such that the conditions set forth in Section 8.2(a) would not be satisfied or (ii) there is an inaccuracy in Seller's representations herein, or a breach by Seller of its covenants herein, in either case such that the conditions set forth in Section 8.2(b) would not be satisfied; provided, however, if such breach or inaccuracy is capable of being cured prior to the earlier of (A) the Outside Date and (B) the date that is twenty (20) business days from the date the Company or Seller, as applicable, is notified in writing by Purchaser of such breach, Purchaser may not terminate the Agreement pursuant to this Section 9.1(c) (x) prior to such date if the Company or Seller, as applicable, is taking reasonable efforts to cure such breach or inaccuracy or (y) following such date if such inaccuracy or breach is cured at or prior to such date; provided, further, that Purchaser is not then in breach of this Agreement in a manner that would cause any of the conditions in Section 8.1 and Section 8.3 to not be satisfied;

(d) By Seller, if there is an inaccuracy in Purchaser's representations herein, or a breach by Purchaser of its covenants herein, in either case such that the conditions set forth in Section 8.3(a) would not be satisfied; provided, however, if such breach or inaccuracy is capable of being cured prior to the earlier of (A) the Outside Date and (B) the date

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that is twenty (20) business days from the date Purchaser is notified in writing by Seller of such breach, Seller may not terminate the Agreement pursuant to this Section 9.1(d) (x) prior to such date if Purchaser is taking reasonable efforts to cure such breach or inaccuracy and (y) following such date if such inaccuracy or breach is cured at or prior to such date; provided, further, that each of Seller and the Company is not then in breach of this Agreement in a manner that would cause any of the conditions in Section 8.1 and Section 8.2 to not be satisfied; or

(e) By Seller, if (i) the Marketing Period has ended and all of the conditions in Section 8.1 and Section 8.2 have been satisfied or (to the extent permitted by applicable Law) waived as of the date the Closing is required to occur in accordance with Section 2.1 (other than those conditions that by their nature are to be satisfied on the Closing Date but which conditions would be capable of being satisfied if the time of Closing were the time of such termination), (ii) Seller has irrevocably confirmed by written notice that if the Equity Financing and Debt Financing are funded, then it would take such actions that are within its control to cause the consummation of the Transactions and the Closing to occur, (iii) Purchaser has failed to consummate

the Share Purchase within three (3) business days of the date the Closing should have occurred in accordance with Section 2.1 and (iv) Seller stood ready, willing and able to consummate the Share Purchase and the Closing at all times during such three (3) business day period.

(f) By Purchaser, upon providing notice to Seller of the non-satisfaction of the Disclosure Condition.

9.2 **Effect of Termination.** In the event of the termination of this Agreement pursuant to Section 9.1, this Agreement shall forthwith become void, and there shall be no liability on the part of Seller, Purchaser, the Company or their respective officers, directors, stockholders, or affiliates; provided, that (a) Section 7.1 (Confidentiality), Section 7.8 (Public Announcements), Section 7.10(c) (Financing Cooperation) Section 9.3 (Fees), Article 11 (General Provisions) and this Section 9.2 shall remain in full force and effect and survive any termination of this Agreement, and (b) subject to Section 9.3(d), such termination shall not relieve any party from liability for any fraud or Willful and Material Breach of its representations or warranties or covenants hereunder. A termination of this Agreement shall not cause a termination of the Confidentiality Agreement or any other agreement between the parties.

9.3 **Fees.**

(a) In the event that this Agreement is terminated:

(i) by Seller pursuant to Section 9.1(e); or

(ii) by Purchaser pursuant to Section 9.1(b)(i), and at such time Seller could have terminated this Agreement pursuant to Section 9.1(e) (without giving effect to the three (3) business day grace period therein);

then, in any such event, Purchaser shall pay Seller the Purchaser Termination Fee, which amount shall be payable by wire transfer of immediately available funds, within three (3) business days of the termination to an account designated in writing by Seller.

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(b) In the event that this Agreement is terminated by Purchaser pursuant to Section 9.1(f), then, Seller shall pay Purchaser the Expense Reimbursement, which amount shall be payable by wire transfer of immediately available funds, within three (3) business days of the termination to an account designated in writing by Purchaser.

(c) Notwithstanding anything to the contrary in this Agreement, Seller acknowledges and agrees on behalf of itself and its affiliates that the Purchaser Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Seller in the circumstances in which the Purchaser Termination Fee is payable for the efforts, expenses and resources expended and opportunity forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision. Seller acknowledges and hereby agrees that the provisions of this Section 9.3 are an integral part of the Transactions, and that, without such provisions, Purchaser would not have entered into this Agreement.

(d) Notwithstanding anything to the contrary set forth in this Agreement, but subject to Section 11.5, each of the parties hereto expressly acknowledges and agrees that Seller's right to receive payment of the Purchaser Termination Fee plus, if applicable, interest pursuant to this Section 9.3, shall constitute the sole and exclusive remedy (whether based in contract, tort or strict liability, by the enforcement of any assessment, by any legal or equitable proceeding, by virtue of any statute, regulation or applicable Law or otherwise) of Seller, the Company and the Company Subsidiaries and their respective affiliates and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents or affiliates (collectively, the "**Seller Related Parties**") against Purchaser and Sponsors and their respective affiliates and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, trustees, officers, employees, agents or affiliates, or any sources of Financing, or any lead arranger, arranger, agent or Representative of, or to, Purchaser, Purchaser or the Sponsors (the "**Purchaser Related Parties**") and any person who pays the Purchaser Termination Fee on Purchaser's behalf for all any and all losses, claims, damages, liabilities, costs, fees, expenses (including reasonable attorney's fees and disbursements), judgments, inquiries and fines suffered in respect of this Agreement (including in respect of any breach, whether or not willful and intentional, of any representation, warranty, covenant or agreement or the failure of the Share Purchase or any other Transactions to be consummated), any contract or agreement executed in connection herewith (including with respect to the Commitment Letters and the Limited Guarantee) and the transactions contemplated hereby and thereby or the Transactions in such circumstances, and upon payment of the Purchaser Termination Fee to Seller pursuant to this Section 9.3, none of the Purchaser Related Parties shall have any further liability or obligation to any of the Seller Related Parties relating to or arising out of this Agreement or the Transactions and no Seller Related Party shall be entitled to bring or maintain any Action against Purchaser or any other Purchaser Related Party arising out of or in connection with this Agreement, any contract or agreement executed in connection herewith (including with respect to the Commitment Letters and the Limited Guarantee) or any of the transactions contemplated hereby or thereby (or the abandonment or termination thereof) or any matters forming the basis for such termination. For the avoidance of doubt, in no event shall Purchaser be required to pay the Purchaser Termination Fee on more than one occasion. The Lenders and

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their respective affiliates and any Purchaser Related Party are express third party beneficiaries of the provisions of this Section 9.3(d), may enforce this Section 9.3(d) directly, and this Section 9.3(d) may not be amended, modified or supplemented by the parties hereto without the prior express written consent of the Lenders.

(e) If Purchaser fails to pay in a timely manner the Purchaser Termination Fee due pursuant to Section 9.3(a), and, in order to obtain such payment, Seller makes a claim that results in a judgment for the Purchaser Termination Fee (or a portion thereof) set forth in Section 9.3(a), Purchaser shall pay interest on the Purchaser Termination Fee at the prime rate of Bank of America, N.A. in effect from time to time from the date such payment was required to be made hereunder.

10. **Indemnification.**

10.1 **Survival.**



(a) If the Share Purchase is consummated, the representations and warranties of the Company contained in this Agreement, the Disclosure Schedule and the certificate contemplated by Section 8.2(a) shall survive the Closing and remain in full force and effect until 5:00 p.m. Eastern Time on the 12 month anniversary of the Closing Date; provided, however, that (i) the representations and warranties of the Company contained in the Company Fundamental Representations and in Section 3.6(a) will remain operative and in full force and effect until 5:00 p.m. Eastern Time on the 36 month anniversary of the Closing Date and (ii) the representations and warranties of the Company set forth in Section 3.15 and Section 3.26 will remain operative and in full force and effect until the period which is thirty (30) days following the end of the applicable statute of limitations. If the Share Purchase is consummated, the representations and warranties of Seller contained in this Agreement and the certificate contemplated by Section 8.2(b) shall survive the Closing and remain in full force and effect until 5:00 p.m. Eastern Time on the 12 month anniversary of the Closing Date; provided, however, that the representations and warranties of Seller contained in the Seller Fundamental Representations will remain operative and in full force and effect until 5:00 p.m. Eastern Time on the 36 month anniversary of the Closing Date.

(b) If the Share Purchase is consummated, the representations and warranties of Purchaser contained in this Agreement and the certificate contemplated by Section 8.3(a) shall survive the Closing and remain in full force and effect until 5:00 p.m. Eastern Time on the 12 month anniversary of the Closing Date.

(c) If the Share Purchase is consummated, all covenants of the parties (including the covenants set forth in Article 6 and Article 7) shall expire and be of no further force or effect as of 12 months from the Closing, except to the extent such covenants provide that they are to be performed after the Closing.

(d) Notwithstanding the foregoing, no right to indemnification pursuant to this Article 10 in respect of any claim based upon any failure of a representation or warranty or any breach of a covenant that is set forth in a Notice of Claim (as defined below) delivered prior to the expiration of the applicable Claims Period (as defined in Section 10.4) with

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respect to such representation or warranty or covenant shall be affected by the expiration of such representation or warranty or covenant.

#### 10.2 Agreement to Indemnify.

(a) Seller shall indemnify and hold harmless Purchaser and its officers, directors, employees, agents and representatives (each hereinafter referred to individually as an “**Purchaser Indemnified Person**” and collectively as “**Purchaser Indemnified Persons**”) from and against any and all liabilities, claims, deficiencies, demands, judgments, damages (including diminution in value), Taxes, interest, fines, penalties, suits, actions, assessments and awards, losses, costs, and expenses (including reasonable attorneys’ fees, other professionals’ and experts’ fees, costs of investigation and court costs (including such fees and costs incurred in connection with enforcing the provisions of this Article 10)) (hereinafter collectively referred to as “**Damages**”) arising out of or resulting from the following (the “**Seller Indemnifiable Matters**”):

(i) any failure of any representation or warranty made by the Company in this Agreement, the Disclosure Schedule or the certificate contemplated by Section 8.2(a) or made by Seller in this Agreement and the certificate contemplated by Section 8.2(b) to be true and correct as of the date of this Agreement (in the case of any such representation or warranty contained in this Agreement or the Disclosure Schedule only) and as of the Closing Date (as though such representation or warranty were made as of the Closing Date, except in the case of representations and warranties which by their terms speak only as of a specific date or dates, in which case such representations and warranties shall be true and correct on and as of such specified date or dates);

(ii) any breach of or default in connection with any of the covenants or agreements made by the Company and Seller in this Agreement to be performed;

(iii) any fraud by the Company or Seller under this Agreement; or

(iv) any Excluded Liabilities.

(b) Purchaser shall indemnify and hold harmless Seller and its officers, directors, employees, agents and representatives (each hereinafter referred to individually as a “**Seller Indemnified Person**” and collectively as “**Seller Indemnified Persons**”) from and against any and all Damages arising out of or resulting from the following (the “**Purchaser Indemnifiable Matters**”):

(i) any failure of any representation or warranty made by Purchaser in this Agreement or the certificate contemplated by Section 8.3(a) to be true and correct as of the date of this Agreement (in the case of any such representation or warranty contained in this Agreement only) and as of the Closing Date (as though such representation or warranty were made as of the Closing Date, except in the case of representations and warranties which by their terms speak only as of a specific date or dates, in which case such representations and warranties shall be true and correct on and as of such specified date or dates);

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(ii) any breach of or default in connection with any of the covenants or agreements made by Purchaser in this Agreement;

(iii) any fraud by Purchaser under this Agreement; or

(iv) any Assumed Liabilities.

#### 10.3 Limitations.

(a) Except as otherwise provided in this Section 10.3(a), no Purchaser Indemnified Person or Seller Indemnified Person shall be entitled to indemnification in respect of any claim for indemnification that is made pursuant to Section 10.2(a)(i) or Section 10.2(b)(i) unless and until (i) the amount of Damages that are indemnifiable pursuant to Section 10.2(a)(i) or Section 10.2(b)(i), as applicable, in connection with any individual claim or series of related claims based on a similar set of operative facts is greater than \$200,000 (the “**De Minimis Threshold**”) and once the De Minimis Threshold has been exceeded, the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, shall be indemnified for all Damages therefrom (including an amount equal to the De Minimis Threshold) (the “**Non De Minimis Damages**”), but subject to any remaining amount of the Deductible and (ii) the aggregate amount of Damages that are indemnifiable pursuant to Section 10.2(a)(i) or Section 10.2(b)(i), as applicable, exceeds \$4,000,000 (the “**Deductible**”) (provided that in the case of each of Section 3.6(a) and Section 3.26 only, the Deductible shall be deemed to be \$1,000,000 respectively), and once the Deductible has been reached, the Purchaser Indemnified Person or Seller Indemnified Person shall be indemnified for all Non De Minimis Damages in excess of the Deductible. None of the De Minimis Threshold, the Deductible, or the Cap shall apply to Damages related to the breach of any Company Fundamental Representations, Seller Fundamental Representations, or any of the representations and warranties contained in Section 3.15.

(b) Except as set forth in Section 10.3(a) and this Section 10.3(b), no Purchaser Indemnified Person or Seller Indemnified Person shall be entitled to indemnification under Section 10.2(a)(i) or Section 10.2(b)(i) for an aggregate amount of Damages exceeding \$25 million (the “**Cap**”) in connection with Damages related to the breach of any of the representations or warranties of Seller, the Company or the Purchaser, respectively. Notwithstanding the foregoing, in the case of Damages attributable to a breach of Section 3.6(a) only, the maximum indemnification liability of Seller will be \$50 million (the “**Sufficiency Cap**”) (it being understood that the Sufficiency Cap is available only with respect to breaches of Section 3.6(a), and that recoveries under Section 10.2(a)(i) for breaches of all other representations and warranties of Seller and the Company will not count concurrently against the Sufficiency Cap but only against the Cap or the Disclosure Cap, as applicable); provided, further, that for purposes of the determination of whether there was a failure of Section 3.6(a) to be true and correct, breaches with respect to Support Assets shall be disregarded unless they are material in the aggregate. Notwithstanding the foregoing, in the case of Damages attributable to a breach of Section 3.26 only, the maximum indemnification liability of Seller will be \$50 million (the “**Disclosure Cap**”) (it being understood that the Disclosure Cap is available only with respect to breaches of Section 3.26, and that recoveries under Section 10.2(a)(i) for breaches of all other representations and warranties of Seller and the Company will not count concurrently against the Disclosure Cap but only against the Cap or the Sufficiency Cap, as applicable). None of the Cap,

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the Disclosure Cap or the Sufficiency Cap shall apply to any claim for indemnification with respect to a breach of Company Fundamental Representations, Seller Fundamental Representations or any of the representations and warranties contained in Section 3.15, which shall be capped at the Total Share Purchase Consideration (the “**Fundamental Representation Cap**”). The parties agree that any liability or indemnification obligation with respect to a breach of Section 10.2(a)(i) (other than a breach of Section 3.6(a) or Section 3.26) shall be payable by Seller as follows: (x) first, up to \$2 million in cash, (y) second, up to \$23 million as a set off against Purchaser’s obligation to pay, if and when payable, the Contingent Consideration, and (z) third, any remaining liability or indemnification obligation, in cash. The parties agree that any liability or indemnification obligation with respect to a breach of Section 3.6(a) or Section 3.26 shall be payable by Seller in cash. For clarity, the maximum indemnification liability of Seller under Section 10.2(a)(i) in all circumstances shall be equal to the Fundamental Representation Cap.

(c) The Purchaser Indemnified Persons and Seller Indemnified Persons shall exercise commercially reasonable efforts (including by seeking to recover for Damages pursuant to existing insurance policies) to mitigate the amount of any Damages after becoming aware of any event that could reasonably be expected to give rise to Damages pursuant to Section 10.2(a)(i)-(ii) or Section 10.2(b)(i)-(ii) (other than for intentional breaches of Section 10.2(a)(ii) or Section 10.2(b)(ii)). Without limiting the foregoing, Damages shall be calculated net of actual recoveries under existing insurance policies and contractual indemnification or contribution provisions (in each case calculated net of any actual collection costs and reserves, deductibles, premium adjustments and retrospectively rated premiums); provided, that, in the event that Purchaser Indemnified Persons or Seller Indemnified Persons recover from Seller or Purchaser, as applicable, for any particular Damages and thereafter recover for the same Damages pursuant to any existing insurance policies and/or contractual indemnification or contribution provisions, then the amount recovered pursuant to such existing insurance policies and/or contractual indemnification or contribution provisions (up to the amount first recovered from Seller or Purchaser, as applicable) shall be paid to Seller by Purchaser or to Purchaser by Seller, as applicable.

(d) Damages pursuant to Section 10.2(a)(i)-(ii) or Section 10.2(b)(i)-(ii) (other than for intentional breaches of Section 10.2(a)(ii) or Section 10.2(b)(ii)) shall include only actual losses and out-of-pocket expenses incurred and shall exclude (i) special, exemplary or punitive Damages, (ii) consequential or indirect damages that were not reasonably foreseeable, unless in each case of (i) and (ii), awarded by an arbitrator or Governmental Authority to a Third Party and paid to such Third Party by a Purchaser Indemnified Person or Seller Indemnified Person, (iii) lost opportunities and other similar speculative Damages, and (iv) diminution or reduction in value damages premised upon application of a multiplier. In the event that particular underlying facts constitute a breach of more than one of the representations, warranties or covenants in this Agreement, then to the extent the same indemnifiable Damages result from such multiple breaches, such indemnifiable Damages may not be actually recovered more than one time by any Purchaser Indemnified Person or Seller Indemnified Person, as applicable, without limiting any rights of a party to make claims under multiple provisions hereunder. If and solely to the extent that an amount of Damages in connection with an Indemnifiable Matter was already taken into account in connection with calculation of the Total

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Share Purchase Consideration or Final Net Working Capital, the same amount of such Damages may not be recovered under this Article 10.

(e) For the purposes of the determination of (i) whether there was a failure of any representation or warranty to be true and correct as of any particular date and (ii) the existence or amount of any Damages in respect of any such failure, any materiality or Material Adverse Effect standard or qualification contained in or otherwise applicable to such representation or warranty shall be disregarded (other than in instances where the word “Material” is used as part of the capitalized defined terms “Company Material Contracts” and “Material Adverse Effect”); provided, however, that in the case of the representations and warranties set forth in Section 3.17(a)(i), such standard or qualification shall not be disregarded for purposes of the foregoing clause (i). For the purposes of the determination of (i) whether there was a failure of any representation or warranty contained in Section 3.15 to be true and correct as of any particular date and (ii) the existence or amount of any Damages in respect of any such failure of such representation in Section 3.15, exceptions to any such representation or warranty contained in the Disclosure Schedule shall be disregarded.

(f) To the extent a Purchaser Indemnified Person or Seller Indemnified Person actually realizes any net Tax Benefits or incurs a net Tax Cost as a result of the payment or incurrence of any Damages or the receipt or accrual of any indemnity payments in respect of such Damages, respectively, the amount of Damages for which indemnification is provided hereunder shall be (i) increased to take account of such net Tax Cost arising from (and that would not have arisen but for) the receipt or accrual of the indemnity payment hereunder (grossed up for such increase) and (ii) reduced to take account of such net Tax Benefits actually realized in cash or applied against cash Taxes payable arising from (and that would not have arisen but for) the payment or incurrence of any such Damages. In furtherance of (and without duplication of) clause (ii) above, to the extent that the claim with respect to which an indemnity obligation arises has not given rise to an actual net Tax Benefit in a prior year or in the year in which the indemnity payment is to be made, but gives rise to an actual net Tax Benefit payable with respect to the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, in any of the four tax years following the payment or incurrence of such Damages, the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, shall pay to Seller or Purchaser, as applicable, an amount equal to the net Tax Benefit within twenty (20) business days after such benefit is actually received in cash or is applied against cash Taxes payable if such benefit is actually realized after the indemnity payment is made. For this purpose, a Purchaser Indemnified Person or Seller Indemnified Person shall be deemed to actually realize a net tax benefit (“**Tax Benefit**”) or a net Tax Cost (“**Tax Cost**”), if, and to the extent that, such a Purchaser Indemnified Person’s or Seller Indemnified Person’s actual Liability for Taxes (after giving effect to any alternative minimum or similar Tax), calculated by excluding any Tax items attributed to the payment or incurrence of the Damages or the receipt or accrual of the indemnity payment in respect of such Damages, is reduced by way of a reduction of Taxes paid or increase in a refund of Taxes actually received or applied against other Taxes due or is increased by way of an increase of Taxes paid or reduction in a refund of Taxes or credits applied against Taxes due, respectively, in each case, determined on a “with and without basis”.

(g) Notwithstanding any other provision of this Agreement, each of Seller and the Company is not making and shall not be construed to have made, and Seller shall

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not have any liability or indemnification obligation with respect to, any representation or warranty as to the amount or availability of any net operating losses, Tax credits, or other Tax attribute. Notwithstanding any other provision of this Agreement, Seller shall not have any liability or indemnification obligation (i) for any Taxes of the Company or Company Subsidiaries with respect to any Taxable period (or portion thereof) beginning after the Closing Date (other than (1) Taxes arising from a breach of any of the representations and warranties set forth in Sections 3.15(e), 3.15(f), or 3.15(g) and (2) Taxes arising as a result of any breach of or default in connection with any of the covenants or agreements made by the Company and Seller in this Agreement to be performed), (ii) for any Taxes of the Company or Company Subsidiaries resulting from any action or transaction outside of the ordinary course of business taken by Purchaser after the Closing on the Closing Date, (iii) the ability of Purchaser, the Company or any of their affiliates to utilize any Tax asset or attribute (e.g., net operating loss carryforward or Tax credit carryforward) in any Taxable period or portion thereof (including any Straddle Period) beginning on or after the Closing Date, (iv) resulting from an amendment of the Company or the Company Subsidiaries’ Tax Returns unless such amendment (A) is the result of a breach or inaccuracy of the representations contained in Section 3.15 or (B) is in connection with a “closing agreement” (within the meaning of Section 7121 of the Code or any other analogous provision of state, local or foreign Law) entered into in connection with a Tax Proceeding relating to any Pre-Closing Tax Period or Straddle Period, or (v) for any Taxes to the extent such Taxes were included as a liability in the calculation of Company Closing Net Working Capital.

(h) The right to indemnification or any other remedy based on representations, warranties, covenants and agreements in this Agreement shall not be affected by any investigation conducted at any time, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any such covenant or agreements, will not affect the right to indemnification or any other remedy based on such representations, warranties, covenants and agreements.

(i) Following the Closing, (i) this Article 10 shall constitute the sole and exclusive remedy for recovery of money Damages by the Purchaser Indemnified Persons and Seller Indemnified Persons for all Seller Indemnifiable Matters and Purchaser Indemnifiable Matters, as applicable, (ii) all applicable statutes of limitations or other claims periods with respect to claims for Seller Indemnifiable Matters and Purchaser Indemnifiable Matters shall be shortened to the applicable claims periods and survival periods expressly set forth herein and (iii) the Purchaser Indemnified Persons and Seller Indemnified Persons irrevocably waive any and all rights they may have to make claims against Seller and Purchaser, as applicable, under statutory and common law, other than claims for fraud, as a result of any Damages and any and all other damages or losses incurred by the Purchaser Indemnified Persons and Seller Indemnified Persons with respect to the Seller Indemnifiable Matters and Purchaser Indemnifiable Matters, as applicable, whether or not in excess of the maximum amounts permitted to be recovered pursuant to this Article 10 (it being understood that nothing in this Section 10.3(i) or elsewhere in this Agreement shall affect the parties’ rights (x) to specific performance or other similar non-monetary equitable remedies with respect to the covenants

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referred to in this Agreement to be performed after the Closing or (y) pursuant to [Section 2.3](#)). Purchaser and Seller hereby irrevocably waive any right of rescission with respect to the Transactions.

#### 10.4 Notice of Claims.

(a) As used herein, the term “**Claim**” means a claim for indemnification of any Purchaser Indemnified Person or Seller Indemnified Person for Damages under this Article 10. Purchaser or Seller may give notice of a Claim under this Agreement, whether for its own Damages or for Damages incurred by any other Purchaser Indemnified Person or Seller Indemnified Person, as applicable, and Purchaser or Seller shall give written notice of a Claim executed by an officer of Purchaser or Seller, as applicable (a “**Notice of Claim**”), to Seller or Purchaser, as applicable, after Purchaser or Seller becomes aware of the existence of any actual or potential claim by an Purchaser Indemnified Person or Seller Indemnified Person, as applicable, for indemnification from Seller or Purchaser, as applicable, under this Article 10, arising out of or resulting from (i) any Seller Indemnifiable Matter or Purchaser Indemnifiable Matter or (ii) the assertion, whether orally or in writing, against any Purchaser Indemnified Person or Seller Indemnified Person, as applicable, of a claim, demand or Action brought by a Third Party against any Purchaser Indemnified Person or Seller Indemnified Person, as applicable (in each such case, a “**Third Party Claim**”) that is based on, arises out of or relates to any Seller Indemnifiable Matter or Purchaser Indemnifiable Matter.

(b) The period during which claims may be initiated (the “**Claims Period**”) for indemnification for Damages arising out of or resulting from: (i) failure of any representation or warranty shall commence at the Closing and terminate at the time of expiration of such representation or warranty set forth in Section 10.1; (ii) breach of or default in connection with any of the covenants or agreements to be performed prior to the Closing shall commence at the Closing and terminate at 5:00 p.m. Eastern Time on the 12 month anniversary of the Closing Date; and (iii) fraud, Excluded Liabilities and Assumed Liabilities under this Agreement shall commence at the Closing and terminate at the expiration of the applicable statute of limitations.

(c) Each Notice of Claim given pursuant to this Section 10.4 shall contain the following information:

(i) that a Purchaser Indemnified Person or Seller Indemnified Person has incurred, paid or sustained, or reasonably anticipates that it will incur, pay or sustain, Damages in an aggregate stated amount arising from such Claim (which amount may be the amount of damages claimed by a Third Party in an action brought against any Purchaser Indemnified Person or Seller Indemnified Person, as applicable, based on alleged facts, which if true, would give rise to liability for Damages to such Purchaser Indemnified Person or Seller Indemnified Person, as applicable, under this Article 10); and

(ii) a brief description, in reasonable detail (to the extent reasonably available to Purchaser or Seller, as applicable), of the facts, circumstances or events giving rise to such Damages based on Purchaser’s or Seller’s, as applicable, good faith belief thereof, including (x) the basis for such anticipated liability and the nature of the breach to which

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such Damages are related, (y) the identity of any Third Party claimant and (z) copies of any formal demand or complaint from any Third Party claimant; and

(iii) a description and status of Purchaser’s or Seller’s, as applicable, claims for recovery of such Damages pursuant to its insurance policies

(d) No delay on the part of Purchaser or Seller in giving Seller or Purchaser, as applicable, a Notice of Claim shall relieve Seller or Purchaser, as applicable, from any of its obligations under this Article 10 unless (and then only to the extent that) Seller or Purchaser, as applicable, is materially prejudiced thereby in terms of the amount of Damages for which Seller or Purchaser, as applicable, is obligated to indemnify the Purchaser Indemnified Persons or Seller Indemnified Persons, as applicable.

10.5 **Defense of Third Party Claims.** Any Third Party Claim shall be subject to the following procedures:

(a) In the event that any Third Party Claim shall be commenced, the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, shall promptly cause written notice of the assertion of such Third Party Claim to be forwarded to the Seller or Purchaser, as applicable, and the Seller or Purchaser will have the right to assume the defense of such Third Party Claim at its sole cost and expense with reputable legal counsel reasonably satisfactory to the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, by delivering written notice of such election to the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, within ten (10) business days after receipt of the Notice of Claim describing such Third Party Claim. If Seller or Purchaser assumes the defense of the Third Party Claim in accordance with this subsection (a), then:

(i) Seller or Purchaser shall keep the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, informed of all material developments relating to such Third Party Claim. The Purchaser Indemnified Person or Seller Indemnified Person, as applicable, shall have the right to receive copies of all pleadings, notices and communications with respect to such Third Party Claim to the extent that receipt of such documents does not waive any privilege.

(ii) The Purchaser Indemnified Person or Seller Indemnified Person, as applicable, may retain separate co-counsel and participate in the defense of such Third Party Claim or settlement negotiations with respect to such Third Party Claim at its own cost and expense, and shall be entitled to reasonably consult with Seller or Purchaser, as applicable, regarding the defense of such Third Party Claim or settlement negotiations with respect to such Third Party Claim.

(iii) Seller or Purchaser shall not consent to the entry of any judgment or enter into any settlement or compromise of such Third Party Claim without the prior written consent of the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, unless (A) such judgment, settlement or compromise includes an unconditional release from all liability with respect to the claim in favor of the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, or (B) the sole relief provided in connection with such

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judgment, settlement or compromise is monetary damages that are paid in full by Seller or Purchaser, as applicable, or any other relief that is enforceable only against Seller or Purchaser, as applicable.

(b) Notwithstanding the foregoing, Seller or Purchaser shall not be entitled to assume the defense of such Third Party Claim (unless the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, agrees otherwise in writing) in the event:

(i) the Third Party Claim involves an injunction or other equitable relief;

(ii) Damages sought under such Third Party Claim (together with Damages sought under any other Claims then pending or in dispute) would reasonably be expected to not be covered by Seller or Purchaser, as applicable, therefor under the limitations set forth in Section 10.3(b); or

(iii) outside legal counsel to the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, reasonably determines that the legal counsel chosen by Seller or Purchaser, as applicable, has a conflict of interest in representing the interests of the Purchaser Indemnified Person or Seller Indemnified Person, as applicable.

(c) In the event that Seller or Purchaser declines to assume the defense of such Third Party Claim within thirty (30) days of receiving a Notice of Claim, or is not entitled to assume the defense of such Third Party Claim according to subsection (b) above, then the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, will have the right to assume the defense of such Third Party Claim with counsel of its choosing (which reasonable fees and expenses of such counsel shall constitute Damages to which Seller or Purchaser, as applicable, is responsible if the Claim underlying such Third Party Claim is a Claim for which the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, is entitled to indemnification hereunder; provided that Seller or Purchaser shall not be required to pay for more than one such counsel (plus any appropriate local counsel). If the Purchaser Indemnified Person or Seller Indemnified Person assumes the defense of the Third Party Claim in accordance with this subsection (c), then:

(i) The Purchaser Indemnified Person or Seller Indemnified Person shall keep Seller or Purchaser, as applicable, informed of all material developments relating to such Third Party Claim. Seller or Purchaser, as applicable, shall have the right to receive copies of all pleadings, notices and communications with respect to such Third Party Claim to the extent that receipt of such documents does not waive any privilege.

(ii) Seller or Purchaser, as applicable, may retain separate co-counsel and participate in the defense of such Third Party Claim or settlement negotiations with respect to such Third Party Claim at its own cost and expense, and shall be entitled to reasonably consult with the Purchaser Indemnified Person or Seller Indemnified person, as applicable, with respect to the defense of such Third Party Claim or settlement negotiations with respect to such Third Party Claim.

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(iii) The Purchaser Indemnified Person or Seller Indemnified Person shall not consent to the entry of any judgment or enter into any settlement or compromise of such Third Party Claim without the prior written consent of Seller or Purchaser, as applicable (which consent shall not be unreasonably withheld, conditioned or delayed (it being understood that it shall be reasonable to withhold such consent where Seller or Purchaser, as applicable, believes in good faith that there is not an underlying basis for indemnification with respect to such settlement)), unless (1) such judgment, settlement or compromise includes an unconditional release from all liability with respect to the claim in favor of the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, or (2) the Purchaser Indemnified Person or Seller Indemnified Person stipulates in writing that there are no Damages for which it is entitled to indemnification under this Article 10 in connection with such judgment, settlement or compromise.

(d) Purchaser, Seller, the Purchaser Indemnified Person and the Seller Indemnified Person, as applicable, shall use commercially reasonable efforts to cooperate (and cause their respective legal counsel to cooperate) in connection with the defense of any Third Party Claim, including by (i) furnishing copies of documents, records or other information reasonably requested by the other party and (ii) providing access to employees whose assistance, testimony or presence is reasonably necessary to assist in the evaluation and defense of such Third Party Claim (provided that any such access shall not unreasonably interfere with the business activities of such party).

10.6 **Resolution of Notice of Claim.** Each Notice of Claim shall be resolved as follows:

(a) If, within 30 days after a Notice of Claim is received by Seller or Purchaser, Seller or Purchaser, as applicable, does not contest such Notice of Claim in writing to Purchaser or Seller, as applicable, as provided in Section 10.6(b), Seller or Purchaser, as applicable, shall be conclusively deemed to have consented to the recovery by the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, of the full amount of Damages specified in the Notice of Claim in accordance with this Article 10.

(b) If Seller or Purchaser gives Purchaser or Seller, as applicable, written notice contesting all or any portion of a Notice of Claim (a "**Contested Claim**") within the 30 day period specified in Section 10.6(a), then, the parties shall attempt in good faith to agree upon the rights of the respective parties with respect to each of the indemnification claims that comprise the Damages (or the portion of the Damages that are the subject of the Contested Claim). If Seller and Purchaser should so agree, a memorandum setting forth such agreement shall be prepared and signed by both such parties. In the absence of such a written settlement agreement within 60 days following receipt by Purchaser or Seller of the written notice from Seller or Purchaser, as applicable, unless otherwise agreed to in writing by Purchaser and Seller, either Seller or Purchaser make seek resolution by binding litigation in accordance with the terms and provisions of Section 10.6(c); provided that Seller or Purchaser, as applicable, shall be conclusively deemed to have consented to the recovery by the Purchaser Indemnified Person or Seller Indemnified Person, as applicable, of the full amount of Damages specified in any portion of a Notice of Claim that is not a Contested Claim.

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(c) Either Purchaser or Seller may bring suit in the venue set forth in Section 11.6(b) to resolve the Contested Claim. Judgment upon any award rendered by the trial court may be entered in any court having jurisdiction.

(d) Seller shall be entitled to refer to an archival copy of the electronic data room maintained by Seller in connection with the Transactions for purposes of administering Claims and exercising its rights hereunder; provided, that, Seller shall treat confidentially and not use or disclose any nonpublic information from or about the Company and Company Subsidiaries or their respective successors and assigns (if any) to anyone (except to Seller's affiliates, employees, attorneys, accountants, financial advisors or authorized representatives strictly on a need to know basis for the above-stated purpose, in each case who agree to treat such information confidentially).

10.7 **Treatment of Indemnification Payments.** Purchaser and Seller agree to treat (and cause their affiliates to treat) any payment received pursuant to this Article 10 as adjustments to the Total Share Purchase Consideration for all tax purposes, to the maximum extent permitted by applicable Law.

## 11. General Provisions.

11.1 **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given and shall be deemed to have been duly given if delivered personally (notice deemed given upon receipt), faxed (notice deemed given upon electronic confirmation of receipt), sent by a nationally recognized overnight courier service such as Federal Express (notice deemed given upon receipt of proof of delivery), sent by email (with notice deemed give upon confirmation of delivery by the recipient) or mailed by registered or certified mail, return

receipt requested (notice deemed given upon receipt) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.1):

if to Purchaser or the Sponsors:

c/o Siris Capital Group, LLC  
601 Lexington Avenue, 59th Floor, New York, NY 10022

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Facsimile No: 212-231-2680  
Attention: General Counsel  
Email: legalnotices@siriscapital.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attention: Andrew J. Nussbaum and Igor Kirman  
Facsimile: (212) 403-2000

if to Seller or the Company:

Synchronoss Technologies, Inc.  
200 Crossing Boulevard, 8<sup>th</sup> Floor  
Bridgewater, New Jersey  
Facsimile No: 908-231-0762  
Attention: Chief Executive Officer  
Email: steve.waldis@synchronoss.com

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

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP  
One Marina Park Drive, Suite 900  
Boston, MA 02210  
Facsimile No: (617) 648-9199  
Attention: Marc Dupré and Andrew Luh  
Email: mdupre@gunder.com and aluh@gunder.com

11.2 **Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the fullest extent possible.

11.3 **Entire Agreement; Assignment; No Other Representations or Warranties.** This Agreement, the Services Agreement, and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof. This Agreement shall not be assigned (whether pursuant to a merger, by operation of law or otherwise), except that (a) Purchaser may assign all or any of their rights hereunder to any subsidiary or affiliate of Purchaser so long as Purchaser remains

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liable for all of the obligations contemplated under this Agreement and (b) Purchaser (and following the Closing Date, the Company) may at any time, and without the consent of any other person or party, unilaterally grant a security interest in, and assign for collateral security purposes, its rights and interests hereunder to the Lenders (or their agent) providing Debt Financing under the Debt Commitment Letter or the definitive documentation with respect thereto. Except for the representations and warranties contained in Article 3 and Article 4 (and the certificates contemplated by Section 8.2(a)-(b)), Purchaser acknowledges that neither Seller, the Company nor any person on behalf of Seller or the Company makes, and neither Purchaser nor any person on its behalf relies upon, any other express or implied representation or warranty with respect to Seller, the Company or any of the Company Subsidiaries or with respect to any other information made available to Purchaser in connection with the Transactions; provided, that, nothing in this sentence only shall relieve Seller's liability for fraud. In addition to the foregoing, Purchaser hereby acknowledges that neither Seller, the Company nor any of the Company Subsidiaries, nor any of their respective shareholders, directors, officers, employees, affiliates, advisors, agents or representatives, nor any other Person, has made or is making, and neither Purchaser nor any person on its behalf is relying upon, any representation or warranty or has or shall have any liability in connection with the Transactions (whether pursuant to this Agreement, in tort or otherwise, including without limitation on any legal theory asserting fraud or intentional misrepresentation) with respect to estimates, projections, forecasts, business plans or cost-related plans that are forward-looking in nature or other forward-looking information (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information, business plans or cost-related plans), except as may be expressly set forth in Article 3 and Article 4 of this Agreement. Except for the representations and warranties contained in Article 5 (and the certificates contemplated by Section 8.3(b)), Seller and Company acknowledge that Purchaser is not making, and neither Seller, the Company nor any person on their behalf relies upon, any other express or implied representation or warranty with respect to Purchaser or with respect to any other information made available to the Company or Seller in connection with the Transactions; provided, that, nothing in this sentence

only shall relieve Purchaser's liability for fraud or shall apply to the Equity Commitment Letter or Limited Guarantee. The Company and Seller hereby acknowledge that neither the Purchaser nor any of its respective shareholders, directors, officers, employees, affiliates, advisors, agents or representatives, nor any other Person, has made or is making any representation or warranty or has or shall have any liability (whether pursuant to this Agreement, in tort or otherwise, including without limitation on any legal theory asserting fraud or intentional misrepresentation) with respect to estimates, projections, forecasts, business plans or cost-related plans that are forward-looking in nature or other forward-looking information (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information, business plans or cost-related plans), except as may be expressly set forth in Article 5 of this Agreement; provided, that, nothing in this sentence only shall apply to the Equity Commitment Letter or Limited Guarantee.

11.4 **Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, other than the provisions of Section 9.3, this Section 11.4, Section 11.5(d), the proviso in Section 11.6(a), the last sentence of Section 11.6(b), Section 11.7 and the final sentence of Section 11.9 are intended to be for the

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benefit of, and shall be enforceable by, the Lender Related Parties, and the provisions of Section 11.12 are intended to be for the benefit of, and shall be enforceable by, the Non-Party Affiliates.

11.5 **Specific Performance.**

(a) Subject to Section 11.5(c), parties hereto agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms hereof, in addition to any other remedy at law or equity, and nothing herein shall be deemed a waiver by any party of any right to injunctive relief or specific performance. Except as otherwise provided herein, including with respect to the Purchaser Termination Fee, any and all remedies herein expressly conferred upon a party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party hereto of any one remedy shall not preclude the exercise of any other remedy.

(b) The right to specific enforcement hereunder shall include the right of Seller to cause Purchaser to cause the Share Purchase and the other Transactions to be consummated on the terms and subject to the conditions set forth in this Agreement only in accordance with the express terms of Section 11.5(c) below. Each of parties to this Agreement further agrees that no other party or any other person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11.5, and each of the parties to this Agreement irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Subject to Section 11.5(c), each of the parties to this Agreement agrees not to raise any objections to (i) the granting of an injunction, specific performance or other equitable relief to prevent or restrain breaches or threatened breaches of this Agreement by Seller or the Company, on the one hand, or Purchaser, on the other hand and (ii) the specific performance of the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants, obligations and agreements of Purchaser pursuant to this Agreement, in each case, on the basis that (A) either party has an adequate remedy at Law or (B) an award of specific performance is not an appropriate remedy for any reason at equity or Law, or any similar grounds.

(c) Notwithstanding the foregoing Section 11.5(a)-(b), it is explicitly agreed that the right of Seller to obtain an injunction, specific performance or other equitable remedies in connection with enforcing Purchaser's obligation to cause the Equity Financing to be funded to fund the Total Share Purchase Amount payable in the Share Purchase and Purchaser's obligations to cause the Closing to occur and to effect the consummation of the Share Purchase and other Transactions (but not the right of Seller to obtain such injunctions, specific performance or other equitable remedies for any other reason) shall be subject to the requirements that (i) the Marketing Period has ended and all of the conditions in Section 8.1 and Section 8.2 have been satisfied by the date the Closing is required to have occurred in accordance with Section 2.1 (other than those conditions that by their nature cannot be satisfied until the Closing Date, provided that such conditions would be capable of being satisfied if the Closing were on such date), (ii) Purchaser fails to complete the Share Purchase by the date the Closing is required to have occurred in accordance with Section 2.1, (iii) the Debt Financing

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provided for by the Debt Commitment Letter has been funded in accordance with the terms thereof or will be funded in accordance with the terms thereof at the Closing Date, if the Equity Financing is funded at such time and (iv) Seller has irrevocably confirmed by written notice that if the Equity Financing and Debt Financing are funded, then it would take such actions that are within its control to cause the consummation of the Transactions and the Closing to occur. In no event shall the Company be entitled to both a grant of specific performance to cause the Share Purchase to be consummated and payment of the Purchaser Termination Fee.

(d) Without limiting the obligations of the Lenders under the Debt Commitment Letter and any Financing Agreement and the rights of Purchaser under the Debt Commitment Letter and any Financing Agreement, each of Seller and the Company acknowledges and agrees that no Lender Related Party shall have any liability to Seller or the Company (or any of their respective Representatives) in connection with this Agreement or any Transactions if such Lender Related Party breaches or fails to perform (whether willfully, intentionally, unintentionally or otherwise) any of its obligations under the Debt Commitment Letter and each of Seller and the Company (on behalf of itself and its Representatives) hereby waives any rights or claims against each Lender Related Party in connection with this Agreement and the Debt Financing, whether at law or equity, in contract, in tort or otherwise, and each of Seller and the Company (on behalf of itself and its Representatives) agrees not to commence (and if commenced agrees to dismiss or otherwise terminate) any action or proceeding against any Lender Related Party in connection with this Agreement or any Transaction (including any action or proceeding relating to the Debt Financing). In no event shall Seller or the Company (or any of their respective Representatives) be entitled to directly seek the remedy of specific performance of this Agreement against any Lender Related Party.

11.6 **Governing Law.**

(a) This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to any applicable conflicts of law; provided that, notwithstanding the foregoing, any disputes involving the Lender Related Parties (except as expressly set forth in the Debt Commitment Letter) will be governed by and construed in accordance with the applicable Laws of the State of New York without giving regard to conflicts or choice of law principles that would result in the application of any Law other than the Law of the State of New York.

(b) All actions and proceedings arising out of or relating to this Agreement shall be heard and determined in the Delaware Court of Chancery, or if no such state court has proper jurisdiction, then the Federal courts located in the State of Delaware (collectively, the “**Delaware Courts**”). The parties hereto hereby (i) consent to submit to the exclusive jurisdiction of the Delaware Courts for the purpose of any Action arising out of or relating to this Agreement brought by any party hereto, (ii) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the Transactions may not be enforced in or by any of the above-named courts, (iii) agree to not bring any action relating to this Agreement or any of the Transactions in any court other than the Delaware Courts and

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(iv) consents to service of process being made through the notice procedures set forth in Section 11.1. Notwithstanding anything in this Agreement to the contrary, each of the parties agree that it will not bring, or support the bringing of, any proceeding, claim or counterclaim, whether in law or in equity, whether arising in contract, tort, equity or otherwise, against the Lender Related Parties in any way relating to this Agreement or any of the Transactions, including any dispute arising out of or relating in any way to the Debt Commitment Letter or the performance thereof, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable Law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the Southern District of New York in the County of New York (and appellate courts thereof).

11.7 **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS (INCLUDING THE DEBT FINANCING AND THE DEBT COMMITMENT LETTER AND ANY ACTION AGAINST ANY LENDER RELATED PARTY). Each of the parties hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver, (b) understands and has considered the implications of such waiver, (c) makes such waiver voluntarily and (d) acknowledges that it and the other hereto have been induced to enter into this Agreement and the Transactions, as applicable, by, among other things, the mutual waivers and certifications in this Section 11.7.

11.8 **General Interpretation.**

(a) The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

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

(c) 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.”

(d) 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, regulation, 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.

(e) The phrase “made available to Purchaser” when used herein, shall mean that the subject documents were uploaded to the electronic data room maintained by Seller

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or were otherwise provided to Purchaser at least twenty-four (24) hours prior to the execution of this Agreement.

(f) For clarity, as used in this Agreement, the term fraud does not include the doctrine of equitable fraud (i.e., fraud by innocent or negligent misrepresentation) under Delaware law.

11.9 **Amendment.** This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective boards of directors at any time prior to the Closing. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto. Notwithstanding anything to the contrary contained herein, no modification, waiver or termination of Section 9.3(d), Section 11.4, Section 11.5(d), the proviso in Section 11.6(a), the last sentence of Section 11.6(b), Section 11.7 and this sentence of Section 11.9 (and any provision of this Agreement to the extent a modification, waiver or termination of such provision would modify the substance of any of the foregoing provisions) that is adverse to the interests of any Lender Related Party will be effective against a Lender Related Party without the prior written consent of such adversely affected Lender Related Party.

11.10 **Waiver.** At any time prior to the Closing, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto, (b) waive any inaccuracy in the representations and warranties of any other party contained herein or in any document delivered pursuant hereto and (c) waive compliance with any agreement of any other party or any condition to its own obligations contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby.

11.11 **Counterparts.** This Agreement may be executed and delivered (including by facsimile or other form of electronic transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

11.12 **Non-Recourse.** Except as set forth in the Equity Commitment Letter and the Limited Guarantee, and in those instances, only to those entities explicitly set forth in the Equity Commitment Letter and the Limited Guarantee, as the case may be, (a) all claims or



causes of action (whether in contract or in tort, in law or in equity) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as parties hereto and only with respect to the specific obligations undertaken by such parties as set forth herein with respect to such parties and no other person shall have any liability for any obligations or liabilities based upon, arising out of, or related to this Agreement or the transactions contemplated hereby and (b) no Person who is not a named party to this Agreement, including without limitation any present or past director, officer, employee, incorporator, member, partner, direct or indirect equityholder (including any members, partners or stockholders), manager, employee, incorporator, controlling person, management company, general partner, affiliate, trustees, agent, attorney, advisor, permitted

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assign and predecessor of any named party to this Agreement (“**Non-Party Affiliates**”), shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose Damages of an entity party against its owners or affiliates) for any Damages arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, non-performance, interpretation, termination, enforcement, construction or execution or any of the transactions contemplated hereby (other than any liability of any Lender Related Party to Purchaser or any of their affiliates pursuant to or in connection with any agreement by or between them) and each party hereto waive and releases all such Damages, claims and obligations against any such Non-Party Affiliates (except that none of Purchaser releases any Lender Related Party for any Damages, claims or obligations arising pursuant to or in connection with any agreement by or between them).

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IN WITNESS WHEREOF, Purchaser, Seller and the Company have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

IMPALA PRIVATE HOLDINGS II, LLC

By: /s/ Peter Berger  
Name: Peter Berger  
Title: Authorized Signatory

SYNCHRONOSS TECHNOLOGIES, INC.

By: /s/ Steven Waldis  
Name: Steven Waldis  
Title: Chief Executive Officer

INTRALINKS HOLDINGS, INC.

By: /s/ Steven Waldis  
Name: Steven Waldis  
Title: Chief Executive Officer

[Signature Page to Stock Purchase Agreement]

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## SECURITIES PURCHASE AGREEMENT

by and between

SYNCHRONOSS TECHNOLOGIES, INC.

and

SILVER PRIVATE HOLDINGS I, LLC

Dated as of October 17, 2017

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Exhibit A — Form of Investor Rights Agreement

Exhibit B — Form of Series A Certificate of Designations

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## SECURITIES PURCHASE AGREEMENT

Securities Purchase Agreement (this “Agreement”), dated as of October 17, 2017, by and between Synchronoss Technologies, Inc., a Delaware corporation (the “Company”), and Silver Private Holdings I, LLC, a Delaware limited liability company (the “Investor”).

WHEREAS, on the terms and conditions set forth in this Agreement, the Company desires to sell, and the Investor desires to purchase, shares of a new series of preferred stock, par value \$0.0001 of the Company, to be designated the Company’s Series A Convertible Participating Perpetual Preferred Stock, par value \$0.0001 per share (the “Series A Preferred”);

WHEREAS, in connection with such purchase and sale, the Company and the Investor desire to make certain representations and warranties and enter into certain agreements;

WHEREAS, in connection with such purchase and sale, the Company and the Investor will execute and deliver at the Closing (as defined below) among other things an investor rights agreement in the form attached as Exhibit A (the “Investor Rights Agreement”); and

WHEREAS, in connection with the execution and delivery of this Agreement, and as a condition and inducement to the Company's willingness to enter into this Agreement, the Investor has delivered to the Company the Equity Commitment Letter (as defined below), pursuant to which the investors named therein (the "Equity Investors") have, subject to the terms and conditions set forth therein, committed to provide all of the funds to the Investor that are necessary for the Investor to fund all of the Investor's obligations at Closing contemplated hereby.

NOW THEREFORE, in consideration of the foregoing and the representations, warranties and agreements set forth in this Agreement, and intending to be legally bound by this Agreement, the Company and the Investor agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

"affiliate" of a specified Person means a Person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Aggregate Put Price" shall have the meaning set forth in Section 8.19(c).

"Agreement" shall have the meaning set forth in the preamble of this Agreement.

"Antitrust Laws" shall have the meaning set forth in Section 8.7(e).

"Board" shall mean the Board of Directors of the Company.

"business day" shall mean a day except a Saturday, a Sunday or other day on which banks in the City of New York are authorized or required by Law to be closed.

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"Bylaws Amendment" shall have the meaning set forth in Section 6.15.

"Cash Consideration" shall have the meaning set forth in Section 2.2(a).

"Closing" shall have the meaning set forth in Section 3.1.

"Closing Date" shall have the meaning set forth in Section 3.1.

"Code" shall mean the Internal Revenue Code of 1986, as amended, together with all regulations, rulings and interpretations thereof or thereunder by the Internal Revenue Service.

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

"Company" shall have the meaning set forth in the preamble of this Agreement.

"Company Charter Documents" shall mean the certificate of incorporation and bylaws of the Company, in each case as amended to the date of this Agreement.

"Company Financial Advisor" shall have the meaning set forth in Section 4.20.

"Company Material Contracts" shall have the meaning set forth in Section 4.10.

"Company Permit" shall have the meaning set forth in Section 4.15.

"Company Plans" shall mean (i) each "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) that the Company or any Company Subsidiary sponsors, participates in, is a party or contributes to, or with respect to which the Company or any Company Subsidiary could reasonably be expected to have any material liability (including the Company Stock Plans) and (ii) each other fringe benefit or employee benefit plan, program, agreement or arrangement, including any stock option, stock purchase, stock appreciation right or other stock or stock-based incentive plan, cash bonus or incentive compensation arrangement, retirement or deferred compensation plan, supplemental executive retirement plan, profit sharing plan, unemployment or severance compensation plan, vacation, employment, change in control, retention or consulting plan or individual agreement, in each case whether written or unwritten, for any current or former employee, consultant, independent contractor or director of, or other individual service provider to, the Company or any Company Subsidiary that does not constitute an "employee benefit plan" (as defined in Section 3(3) of ERISA), that the Company or any Company Subsidiary presently sponsors, participates in, is a party or contributes to, or with respect to which the Company or any Company Subsidiary could reasonably be expected to have any material liability, but other than any Foreign Benefit Plan or any benefit or compensation plan, program or arrangement sponsored, maintained or administered by a Governmental Authority or required to be maintained or contributed to by Law.

"Company PSU" means an award under any of the Company Stock Plans that provides for payment at a future date of one or more shares of Common Stock or value derived therefrom subject to performance-based vesting criteria, other than a Company Stock Option or Company RSU.

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"Company RSU" means an award under any of the Company Stock Plans that provides for payment at a future date of one or more shares of Company Common Stock or value derived therefrom, other than a Company Stock Option or Company PSU.

"Company Stock Option" means any option to purchase one or more shares of Common Stock granted under any of the Company Stock Plans, other than the ESPP.

“Company Stock Plans” shall mean, collectively, the Company’s 2015 Equity Incentive Plan, the Company’s 2010 New Hire Equity Incentive Plan, the Company’s 2006 Equity Incentive Plan, the Company’s 2000 Equity Incentive Plan, the Company’s Employee Stock Purchase Plan (the “ESPP”) and any other plan, program or arrangement providing for the grant of equity-based awards to directors, officers, employees or other service providers of the Company or any Company Subsidiaries.

“Company Subsidiaries” shall mean all Subsidiaries of the Company.

“Confidentiality Agreement” shall mean that certain Confidentiality Agreement, dated as of May 19, 2017, between Siris Capital Group, LLC, an affiliate of Investor, and the Company.

“Contract” means any oral or written legally binding contract, subcontract, agreement, indenture, deed of trust, license, sublicense, note, bond, loan instrument, mortgage, lease, purchase or sales order, concession, franchise, option, insurance policy, benefit plan, guarantee and any similar legally binding arrangement, undertaking, commitment or pledge.

“control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, partnership interests or other ownership interests, as trustee or executor, by contract or credit arrangement or otherwise.

“DGCL” shall mean the General Corporation Law of the State of Delaware.

“Delay Notice” shall have the meaning set forth in Section 3.2.

“Delayed Closing Date” shall have the meaning set forth in Section 3.2.

“Disclosure Schedule” shall have the meaning set forth in Section 4.

“Equity Financing” shall have the meaning set forth in Section 5.7.

“Equity Commitment Letter” shall have the meaning set forth in Section 5.7.

“Equity Investors” shall have the meaning set forth in the recitals of this Agreement.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974.

“Exchange” shall have the meaning set forth in Section 8.11.

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“Exchange Act” shall mean the U.S. Securities Exchange Act of 1934, and the rules and regulations promulgated by the SEC thereunder.

“Expense Reimbursement” shall have the meaning set forth in Section 10.11.

“Filed SEC Reports” shall mean all forms, statements, certifications, reports and documents required to be filed or furnished by the Company with the SEC pursuant to the Exchange Act on or after February 27, 2017 (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, as such statements and reports may have been amended since the date of their filing), but excluding any risk factor disclosure under the heading “Risk Factors” and any disclosure of risks included or referenced in any “forward-looking statements” disclaimer, or any other disclosures included in any such report, schedule, form, statement or other document to the extent they are precatory, predictive or forward-looking in nature.

“Financial Restatement” shall mean the restatement of the consolidated balance sheets and the related consolidated statements of income and comprehensive income, stockholders’ equity and cash flows of the Company and the Company Subsidiaries for the fiscal years ended December 31, 2016, December 31, 2015, and, if applicable, December 31, 2014 (and the respective quarterly periods therein), in each case in order to correct certain identified accounting matters.

“Foreign Benefit Plan” shall mean any compensation or benefit plan or arrangement that is maintained or contributed to by the Company or any Company Subsidiary for the benefit of employees or individual workers located primarily outside the United States, other than any benefit or compensation plan or arrangement maintained by a Governmental Authority or required to be maintained or contributed to by Law.

“Fraud” means fraud under the laws of the State of Delaware; provided, however, the term Fraud does not include the doctrine of equitable fraud (i.e., fraud by innocent or negligent misrepresentation) under Delaware law.

“Fundamental Representations” shall have the meaning set forth in Section 10.3.

“GAAP” shall mean United States generally accepted accounting principles, as in effect from time to time, applied on a consistent basis.

“Governmental Authority” shall mean any (i) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or entity and any court, arbitral body or other tribunal); or (iv) organization, entity or body or individual exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature (including stock exchanges).

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“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“IL Purchase Agreement” shall have the meaning set forth in Section 4.18.

“Indebtedness” shall mean any (i) indebtedness for borrowed money, (ii) indebtedness evidenced by any bond, debenture, mortgage, indenture or other debt instrument or debt security, (iii) accounts payable to trade creditors and accrued expenses, in each case, not arising in the ordinary course of business, (iv) amounts owing as deferred purchase price for the purchase of any property, (v) capital lease obligations and (vi) guarantee of any such indebtedness, obligations or debt securities of a type described in clauses (i) through and (v) above of any other Person.

“Indemnified Liabilities” shall have the meaning set forth in Section 10.4(a).

“Indemnitees” shall have the meaning set forth in Section 10.4(a).

“Indemnity and Expense Reimbursement Agreement” shall have the meaning set forth in Section 8.16.

“Intellectual Property” shall have the meaning set forth in Section 4.11.

“Investor” shall have the meaning set forth in the preamble of this Agreement.

“Investor Rights Agreement” shall have the meaning set forth in the recitals of this Agreement.

“Knowledge” of the Company shall mean the actual knowledge as of the date of this Agreement of Ronald Prague, Stephen Waldis, Bob Garcia, Lawrence Irving, Pat Doran, and Chris Putnam, including in each case the knowledge that such person would have obtained in the reasonable conduct of his or her duties after familiarizing himself or herself with the representations and warranties of the Company contained in Section 4 of this Agreement and after reasonable inquiry of his or her direct reports with operational responsibility for the matter in question.

“Law” shall mean any applicable federal, state, local, foreign or other law (statutory, common or otherwise), including any statute, regulation, rule, ordinance, code, convention, directive, order, judgment or other legal requirement of a Governmental Authority of competent jurisdiction.

“Legal Proceeding” shall mean any litigation, suit, claim, charge, action, demand, complaint, citation, summons, subpoena, audit, hearing, inquiry, proceeding, arbitration or mediation of any nature, whether at law or equity, by or before a Governmental Authority, arbitrator or mediator of competent jurisdiction.

“Lien” shall mean, with respect to any property or asset, any pledge, lien, charge, mortgage, deed of trust, lease, sublease, license, restriction, hypothecation, right of first refusal or offer, conditional sales or other title retention agreement, adverse claim of ownership or use,

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easement, encroachment, right of way or other title defect, encumbrance, option to purchase or lease or otherwise acquire any interest, and security interest of any kind or nature whatsoever.

“Material Adverse Effect” shall mean (i) with respect to the Company, any result, event, occurrence, condition, circumstance, development, state of facts, change or effect (each an “Effect”) that has had, or that would reasonably be expected to have, individually or when taken together with all other Effects, (a) a material adverse effect on the business, condition (financial or otherwise), assets (including intangible assets), liabilities or results of operations of the Company and the Company Subsidiaries, taken as a whole, or (b) would reasonably be expected to materially impair the performance by the Company of its obligations hereunder or the consummation of the Transactions; provided, that, with respect to clause (a), none of the following Effects shall be deemed either alone or in combination to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (A) changes in the industry in which the Company or the Company Subsidiaries operate; (B) changes in the general economic or business conditions within the U.S. or other jurisdictions in which the Company or the Company Subsidiaries have operations; (C) general changes in the economy or securities, credit, financial or other capital markets of the U.S. or any other region outside of the U.S. in which the Company or the Company Subsidiaries operate (including changes generally in prevailing interest rates, currency exchange rates, credit markets and price levels or trading volumes); (D) earthquakes, fires, floods, hurricanes, tornadoes or similar catastrophes, or acts of terrorism, war, sabotage, national or international calamity, military action or any other similar event or any change, escalation or worsening thereof after the date hereof; (E) any change in GAAP or any change in Laws (or interpretation or enforcement thereof) applicable to the operation of the business of the Company and the Company Subsidiaries; (F) the execution of this Agreement or the public disclosure this Agreement; provided that this foregoing clause (F) will not be deemed to apply to the representations and warranties of the Company set forth in Section 4.8; (G) any failure to meet internal or published projections, forecasts or revenue or earning predictions for any period; provided that the underlying causes of such decline, change or failure, may be considered in determining whether there was a Material Adverse Effect; and (H) any actions taken, or failure to take any action, in each case, to which the Investor has expressly given advance written approval or consent or that is affirmatively required by this Agreement; provided that an Effect described in any of the foregoing clauses (A) through (E) may be taken into account to the extent the Company and the Company Subsidiaries are disproportionately affected thereby relative to other companies in the industries in which the Company and the Company Subsidiaries operate or (ii) with respect to the Investor, any result, event, occurrence, condition, circumstance, development, state of facts, change, or effect which has had, or that would reasonably be expected to interfere in any material respect with the performance by the Investor of its obligations hereunder or the consummation by the Investor of the Transactions.

“Measurement Date” shall have the meaning set forth in Section 4.7.

“Monitoring Fee” shall have the meaning set forth in Section 8.21(a).

“Monitoring Period” shall have the meaning set forth in Section 8.21(a).

“Non-Party Affiliates” shall have the meaning set forth in Section 10.2(e).

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“Outside Date” shall have the meaning set forth in Section 9.1(a).

“Per Share Put Price” shall have the meaning set forth in Section 8.19(a).

“Person” shall mean an individual, corporation, partnership, limited partnership, limited liability company, syndicate, person, trust, association, enterprise, society, estate, firm, joint venture, organization, entity or Governmental Authority.

“PIK Shares” shall mean shares of Series A Preferred issuable as PIK Dividends (as defined in Series A Certificate of Designations) on the Preferred Shares (and such PIK Shares) assuming all dividends payable through the fifth anniversary of the Closing Date are paid as PIK Dividends.

“Preferred Shares” shall have the meaning set forth in Section 2.1.

“Purchase Price” shall have the meaning set forth in Section 2.2(b).

“Put Closing” shall have the meaning set forth in Section 8.19(c).

“Put Closing Date” shall have the meaning set forth in Section 8.19(b).

“Put Collateral” shall have the meaning set forth in Section 8.20(b).

“Put Escrow Account” shall have the meaning set forth in Section 8.20(a).

“Put Escrow Agent” shall mean the escrow agent under the Put Escrow Agreement, as selected by the Investor in its sole discretion, and in each case any successor thereto in accordance with the terms of the Put Escrow Agreement.

“Put Escrow Agreement” means an escrow agreement among the Company, the Investor and the Put Escrow Agent, creating the Put Escrow Account and containing the terms set forth in Section 8.20 and such other customary terms as agreed among the parties thereto.

“Put Escrow Fund” shall mean \$87,272,394 to be deposited with the Put Escrow Agent, together with any interest and other income thereon.

“Put Notice” shall have the meaning set forth in Section 8.19(b).

“Put Right” shall have the meaning set forth in Section 8.19(a).

“Put Shares” shall have the meaning set forth in Section 8.19(b).

“Representatives” shall mean, with respect to any Person, the advisors, attorneys, accountants, consultants, agents or other representatives (acting in such capacity) retained by such Person or any of its affiliates, together with directors, officers and employees of such Person and its affiliates.

“Restated Financial Statements” shall have the meaning set forth in Section 4.13(a).

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“Restraint” shall have the meaning set forth in Section 6.1.

“Restricted Stock” shall mean each share of Common Stock issued pursuant to any Company Stock Plan or otherwise that is subject to specified vesting criteria.

“SEC” shall mean the U.S. Securities and Exchange Commission or any other U.S. federal agency then administering the Securities Act or Exchange Act.

“SEC Reports” shall have the meaning set forth in Section 4.14.

“Securities” shall have the meaning set forth in Section 5.1(a).

“Securities Act” shall mean the U.S. Securities Act of 1933, and the rules and regulations promulgated by the SEC thereunder.

“Series A Certificate of Designations” shall have the meaning set forth in Section 8.18.

“Series A Preferred” shall have the meaning set forth in the recitals of this Agreement.

“Stock Consideration” shall have the meaning set forth in Section 2.2(b).

“subsidiary” or “subsidiaries” shall mean, when used with reference to a party, any corporation or other organization, whether incorporated or unincorporated, of which such party or any other subsidiary of such party is a general partner (excluding partnerships the general partnership interests of which held by such party or any subsidiary of such party do not have a majority of the voting interests in such partnership) or serves in a similar capacity, or, with respect to such corporation or other organization, 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 is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

“Subsidiary Charter Documents” shall mean the certificate of incorporation, bylaws and other similar governing documents of each Company Subsidiary, in each case as amended to the date of this Agreement.

“Tax Returns” shall mean all returns, elections, claims for refund, declarations, reports, statements, estimates, information statements and other forms and documents (including all schedules, supplements, exhibits, and other attachments thereto) filed or required to be filed with any Governmental Authority with respect to the calculation, determination, assessment or collection of, any Taxes and including any amendments thereto.

“Taxes” shall mean all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, and property taxes and all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Authority in connection with any of the foregoing.

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“Transactions” shall mean the transactions contemplated by this Agreement, including the Investor Rights Agreement and the transactions contemplated thereby.

## 2. Purchase and Sale of the Preferred Shares; Escrow Payment.

2.1 Purchase and Sale. On the terms and conditions set forth in this Agreement, at the Closing, the Investor will purchase from the Company, and the Company will issue, sell and deliver to the Investor, in exchange for the Purchase Price, 185,000 shares of Series A Preferred, with an initial liquidation preference of \$1,000 per share (the “Preferred Shares”).

2.2 Payment at Closing. On the terms and conditions set forth in this Agreement, at the Closing, the Investor will:

(a) pay to the Company an aggregate amount in cash equal to \$97,727,606 (the “Cash Consideration”) to be paid in full to the Company on the Closing Date; and

(b) transfer and deliver to the Company 5,994,667 shares of Common Stock (the “Stock Consideration” and together with the Cash Consideration, the “Purchase Price”).

2.3 Put Escrow Release. On the terms and conditions set forth in this Agreement and the Put Escrow Agreement, at the Closing (and subject to the occurrence thereof), the Investor and the Company shall deliver a notice to the Put Escrow Agent authorizing the release of the Put Escrow Fund to the Company.

## 3. Closing.

3.1 The consummation of the purchase and sale of the Preferred Shares and the other Transactions (the “Closing”) shall take place at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, at One Marina Park Drive, Suite 900, Boston, Massachusetts 02210 at 10:00 a.m. (local time), as soon as practicable, but, subject to Section 3.2, no later than the date that is two (2) business days following the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in Sections 6 and 7, or at such other time and place as the Company and the Investor shall mutually agree in writing (the “Closing Date”). At the Closing, the Company shall deliver to the Investor certificates representing that number of Preferred Shares set forth in Section 2 in exchange for the Purchase Price (the payment of the Cash Consideration by wire transfer of immediately available funds to an account designated by the Company in advance of the Closing Date and the transfer and delivery of the Share Consideration).

3.2 Notwithstanding the first sentence of Section 3.1, prior to the Closing, the Investor, by written notice delivered to the Company in accordance with Section 10.9 (a “Delay Notice”), shall have the right from time to time to delay the parties’ obligations to close the purchase and sale of the Preferred Shares hereunder (which obligation shall be subject to the satisfaction or waiver of the conditions set forth in Sections 6 and 7, as applicable, on the Delayed Closing Date) to a date specified in such Delay Notice, but in

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no event later than the three-month anniversary of the date of the IL Trigger Event (or, if such three month anniversary is not a business day, the next succeeding business day) (the latest date to which the Investor shall have so delayed such obligations, the “Delayed Closing Date”).

3.3 Following the delivery of a Delay Notice, subject to the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in Sections 6 and 7, the consummation of the purchase and sale of the Preferred Shares and the other Transactions shall take place on the Delayed Closing Date or at such other time as the Company and the Investor shall mutually agree in writing (and, unless the context otherwise requires, all references in this Agreement to the Closing Date shall refer to the Delayed Closing Date or such other agreed date on which the Closing shall occur).

4. Representations and Warranties of the Company. The Company represents and warrants to the Investor that as of the date of this Agreement and as of the Closing Date, except, other than with respect to the Fundamental Representations, (a) as otherwise disclosed or incorporated by reference in any Filed SEC Reports filed with the SEC prior to the date of this Agreement and (b) as set forth in the disclosure letter dated as of the date of this Agreement (the “Disclosure Schedule”) provided to the Investor separately, specifically identifying the relevant section of this Agreement (provided that an item disclosed in any Section shall be deemed to have been disclosed for each other Section of this Agreement to the extent the relevance of such disclosure to such other section of this Agreement is reasonably apparent on the face of such disclosure):

4.1 Organization, Good Standing and Qualification. Each of the Company and the Company Subsidiaries is duly organized, validly existing and in good standing under the laws of the state of its formation; has all requisite power and authority to own its properties and conduct its business as presently conducted; and is duly qualified to do business and in good standing in each state in the United States of America where its business requires such qualification, except where failure to be so duly organized, validly existing and in good standing, to have such requisite power and authority or to be so duly qualified and in good standing would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. True and accurate copies of the Company Charter Documents, each as in effect as of the date of this Agreement, have been made available to the Investor. As of the date of this Agreement, the Company has no “significant” Subsidiaries other than as listed in the Filed SEC Reports.

4.2 Authorization; Enforceable Agreement.

(a) The Company has full right, power, authority and capacity to enter into this Agreement and the Investor Rights Agreement and to consummate the Transactions. All corporate action on the part of the Company, its officers, directors, and shareholders necessary for the authorization, execution, and delivery of this Agreement and the Investor Rights Agreement, the performance of all obligations of the Company under this Agreement and the Investor Rights Agreement, and the authorization, issuance (or reservation for issuance), sale, and delivery of (i) the Preferred Shares being sold hereunder and the PIK Shares, (ii) the shares of Common Stock issuable in respect of

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increases of the liquidation preference of the Preferred Shares and the PIK Shares in accordance with the terms of the Series A Certificate of Designations, and (iii) the Common Stock issuable upon conversion of the Preferred Shares and the PIK Shares in accordance with the terms of the Series A Certificate of Designations has been, or will be, taken, and this Agreement and the Investor Rights Agreement, when executed and delivered, assuming due authorization, execution and delivery by the Investor, constitutes and will constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, subject to (A) the filing of the Series A Certificate of Designations with the Delaware Secretary of State pursuant to [Section 6.5](#) and (B) as to enforcement, to applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or similar Laws affecting the enforcement of creditors’ rights generally and to general equitable principles (whether considered in a proceeding in equity or at Law).

(b) On or prior to the date of this Agreement, the Board has duly adopted resolutions (i) evidencing its determination that as of the date of this Agreement this Agreement and the Transactions are fair to and in the best interests of the Company and its shareholders, (ii) approving this Agreement and the Investor Rights Agreement and the Transactions, (iii) declaring this Agreement and the issuance and sale of the Preferred Shares advisable, (iv) approving the Bylaws Amendment, and (v) adopting the Series A Certificate of Designations.

4.3 Indebtedness. Neither the Company nor any of the Company Subsidiaries is, immediately prior to this Agreement, or will be, at the time of the Closing after giving effect to the Closing, in default in the payment of any material Indebtedness or in default under any material agreement relating to its material Indebtedness. Neither the Company nor any of the Company Subsidiaries has issued or incurred any debt security or other Indebtedness that by its terms is convertible into or exchangeable for, or accompanied by warrants for or options to purchase, any capital stock of the Company.

4.4 Litigation. There is neither any action, suit, proceeding or investigation pending nor, to the Company’s Knowledge, threatened against, nor any outstanding judgment, order or decree against, the Company or any of the Company Subsidiaries before or by any Governmental Authority or arbitral body which, individually or in the aggregate, have had, or if adversely determined, would be reasonably likely to result in, a Material Adverse Effect. Neither the Company nor any of the Company Subsidiaries is in default with respect to any judgment, order or decree of any Governmental Authority in a materially adverse manner. The Company is not a party or subject to, and none of its assets is bound by, the provisions of any order, writ, injunction, judgment, or decree of any Governmental Authority except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Notwithstanding the foregoing, for all purposes of the Agreement, the Company does not make any representation or warranty pursuant to this [Section 4.4](#) or [Section 4.8](#) regarding the effect of the applicable Antitrust Laws on its ability to execute, deliver, or perform its obligations under this Agreement or to consummate the transactions described in this Agreement as a result of the enactment, promulgation, application, or threatened or actual judicial or administrative investigation or litigation under, or enforcement of, any

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Antitrust Law with respect to the consummation of the transactions described in this Agreement.

4.5 Governmental Consents. No consent, notice, waiting period expiration or termination, approval, order, or authorization of, or registration, qualification, declaration, or filing with, any federal, state, or local Governmental Authority on the part of the Company is required in connection with the offer, sale, or issuance of the Preferred Shares and the PIK Shares (and the Common Stock issuable upon conversion of the Preferred Shares and the PIK Shares) or the consummation of any other Transaction, except for the following: (i) the filing of the Series A Certificate of Designations with the Delaware Secretary of State pursuant to [Section 6.5](#); (ii) the compliance with other applicable state securities Laws, which compliance will have occurred within the appropriate time periods; (iii) the filing with the SEC of such reports under the Exchange Act as may be required in connection with this Agreement and the Transactions; (iv) the approval of, and the filings required to be made, prior to or following the Closing under the published rules of NASDAQ in connection with the Transactions (including the issuance and sale of the Preferred Shares); (v) filings required under, and compliance with other applicable requirements of, the HSR Act and other applicable Antitrust Laws and (vi) such consents, approvals, orders, authorizations, registrations, qualifications, declarations, filings and notices the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Assuming that the representations of the Investor set forth in [Section 5](#) are true and correct, the offer, sale, and issuance of the Preferred Shares in conformity with the terms of this Agreement are, and the issuances of PIK Shares under the Series A Certificate of Designations will be, exempt from the registration requirements of [Section 5](#) of the Securities Act, and all applicable state securities Laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

4.6 Valid Issuance of Preferred and Common Stock. The Preferred Shares being purchased by the Investor hereunder, when issued, sold, and delivered in accordance with the terms of this Agreement for the consideration expressed in this Agreement, will be duly and validly issued, fully paid, and nonassessable, and will be free of any Liens or restrictions on transfer other than restrictions under this Agreement, the Investor Rights Agreement and the Series A Certificate of Designations and under applicable state and federal securities Laws. Each of the shares of Common Stock issuable upon conversion of the Preferred Shares purchased under this Agreement and the PIK Shares has been duly and validly reserved for issuance and, upon issuance in accordance

with the terms of the Series A Certificate of Designations, will be duly and validly issued, fully paid, and nonassessable and will be free of any Liens or restrictions on transfer other than restrictions on transfer under the Investor Rights Agreement and under applicable state and federal securities Laws. The sale of the Preferred Shares is not, and the issuance and the delivery of the PIK Shares will not be, and the subsequent conversion of the Preferred Shares and the PIK Shares into Common Stock will not be, subject to any preemptive rights, rights of first offer or any anti-dilution provisions contained in the Company Charter Documents. The PIK Shares when delivered in accordance with the Series A Certificate of Designation will be duly and validly issued, fully paid, and nonassessable

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and will be free of any Lines or restrictions on transfer other than restrictions on transfer under the Investor Rights Agreement and under applicable state and federal securities Laws.

4.7 **Capitalization.** The authorized capital stock of the Company consists of 100,000,000 shares of Common Stock of which 47,514,845 were issued and outstanding as of the close of business on September 30, 2017 (the "Measurement Date") (including 2,452,102 shares of Restricted Stock, and excluding 245,581 Company RSUs and 519,735 Company PSUs), and 10,000,000 shares of preferred stock, par value \$0.0001, none of which is issued and outstanding (excluding the Preferred Shares to be issued to the Investor pursuant to this Agreement). Since September 30, 2017 through the date of this Agreement, the Company has not issued any shares of capital stock other than issuance of Common Stock upon conversion or vesting of convertible securities outstanding as of the Measurement Date and the issuance of equity compensation in the ordinary course to employees (other than officers with a title of vice president or above) and other service providers. As of the date hereof, there are 1,167,338 shares of Common Stock held by the Company in its treasury. All issued and outstanding shares have been duly authorized and validly issued, fully paid, nonassessable and free of preemptive rights. The Company has reserved that number of shares of Common Stock sufficient for issuance upon conversion of the Preferred Shares being issued and sold pursuant to this Agreement and the PIK Shares. As of the Measurement Date (a) options to purchase an aggregate of 2,452,102 shares of Common Stock are outstanding under the Company Stock Plans, (b) 2,787,658 shares of Restricted Stock are outstanding under the Company Stock Plans, (c) 245,581 Company RSUs are outstanding under the Company Stock Plans and (d) 519,735 Company PSUS are outstanding under the Company Stock Plans. As of the Measurement Date, there are 1,195,192 shares of Common Stock reserved and available for issuance under the Company Stock Plans. Other than the Company's 0.75% Convertible Senior Notes, due 2019, as provided in this Agreement and the Investor Rights Agreement, there are no other outstanding rights, options, warrants, preemptive rights, rights of first offer, or similar rights for the purchase or acquisition from the Company of any securities of the Company, nor are there any commitments to issue or execute any such rights, options, warrants, preemptive rights or rights of first offer or similar rights. Except as otherwise provided in the Series A Certificate of Designations and the outstanding shares of Restricted Stock referenced above, there are no outstanding rights or obligations of the Company to repurchase or redeem any of its equity securities. The respective rights, preferences, privileges, and restrictions of the Preferred Shares and the Common Stock are as stated in the Certificate of Incorporation (including the Series A Certificate of Designations). The Company does not have outstanding shareholder purchase rights or "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.8 **Compliance with Other Instruments.** The Company is not in violation or default of any provision of the Company Charter Documents. The execution, delivery, and performance of and compliance with this Agreement and the Investor Rights Agreement, and the issuance and sale of the Preferred Shares, will not (i) result in any default or violation of the Company Charter Documents; (ii) result in any default or violation of any

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agreement relating to its Indebtedness of the Company and the Company Subsidiaries or violation of any material judgment, order or decree of any Governmental Authority; or (iii) be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any such provision, require any consent or waiver under any such provision, or result in the creation of any mortgage, pledge, lien, encumbrance, or charge upon any of the properties or assets of the Company pursuant to any such provision, or the suspension, revocation, impairment or forfeiture of any permit, license, authorization, or approval applicable to the Company, its business or operations, or any of its assets or properties pursuant to any such provision, except in the case of clauses (ii) and (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.9 **Absence of Changes; Material Adverse Effect.** Neither the Company nor any Company Subsidiary has sustained, since the date of the latest audited financial statements for the year ended December 31, 2016 included in the Filed SEC Reports, any material loss or interference with the business of the Company and the Company Subsidiaries, taken as a whole, from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and, since December 31, 2016, there has not been any change in the capital stock (other than as a result of the grant or exercise of stock options or restricted stock pursuant to the Company Stock Plans) or Indebtedness of the Company or any of the Company Subsidiaries or any Material Adverse Effect, or any development involving a prospective Material Adverse Effect, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and the Company Subsidiaries taken as a whole.

4.10 **Material Contracts.** Neither the Company nor any of the Company Subsidiaries is in violation or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound that (a) is required to be disclosed in the Filed SEC Reports or (b) involves payments to, or the receipt of payments by, the Company or any of the Company Subsidiaries in excess of ten million dollars (\$10,000,000) in any twelve-month period (collectively, "Company Material Contracts"). The Company and each Company Subsidiary have performed all of the obligations required to be performed by them and are entitled to all benefits under, and is not alleged to be in default in respect of, any Company Material Contract. Each of the Company Material Contracts is in full force and effect, subject only to the effect, if any, of applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or similar Laws affecting the enforcement of creditors' rights generally and to general equitable principles (whether considered in a proceeding in equity or at Law). There exists no default or event of default or event, occurrence, condition or act, with respect to the Company or any Company Subsidiary, or to the Company's Knowledge, with respect to any other contracting party, that with the giving of notice, the lapse of time or the happening of any other event or condition, would reasonably be expected to (i) become a default or event of default under any Company Material Contract, except for such defaults that are not material under the terms of such Company Material Contract, or (ii) give any third party

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(A) the right to declare a default or exercise any remedy under any Company Material Contract, (B) the right to accelerate the maturity or performance of any obligation of the Company or any Company Subsidiary under any Company Material Contract or (C) the right to cancel, terminate or modify any Company Material Contract. No contracting party under any Company Material Contract specified in clause (b) of this Section 4.10 has in writing notified the Company or any Company Subsidiary of its intention to cancel or modify any such Company Material Contract.

4.11 Intellectual Property. The Company and the Company Subsidiaries own or have the right to use pursuant to license, sublicense, agreement or permission all patents, trademarks, service marks, patent applications, trade names, copyrights, trade secrets, domain names, information, proprietary rights and processes (“Intellectual Property”) necessary for their business as described in the Filed SEC Reports as currently conducted and are necessary in connection with the products and services under development, without any known conflict with or infringement of the interests of others, except where the failure to own or possess such rights, and except for such conflicts or infringements which, individually or in the aggregate, have not had, or are not reasonably likely to result in, a Material Adverse Effect, and have taken reasonable steps necessary to secure interests in such Intellectual Property and have taken reasonable steps necessary to secure assignment of such Intellectual Property from its employees and contractors; the Company has no Knowledge of any infringement by any third party of the trademark, trade name, patent, copyright, license, trade secret, know-how, intellectual property or other similar rights of the Company or any of the Company Subsidiaries which, individually or in the aggregate, have had, or are reasonably likely to result in, a Material Adverse Effect; except as set forth in the Filed SEC Reports, the Company is not aware of outstanding options, licenses or agreements of any kind relating to the Intellectual Property of the Company which are required to be set forth in the Filed SEC Reports, and, except as set forth in the Filed SEC Reports, neither the Company nor any of the Company Subsidiaries is a party to or bound by any options, licenses or agreements with respect to the Intellectual Property of any other Person which are required to be set forth in the Filed SEC Reports; to the Company’s Knowledge, none of the technology employed by the Company and the Company Subsidiaries has been obtained or is being used by the Company or the Company Subsidiaries in violation of any contractual fiduciary obligation binding on the Company or any of the Company Subsidiaries or any of its directors or executive officers or any of its employees or otherwise in violation of the rights of any Person; neither the Company nor any of the Company Subsidiaries has violated, infringed or conflicted with, or, by conducting its business as set forth in the Filed SEC Reports, would violate, infringe or conflict with any of the Intellectual Property of any other Person other than any such violations, infringements or conflicts which, individually or in the aggregate, have not had, and are not reasonably likely to result in, a Material Adverse Effect, and the Company and the Company Subsidiaries have not received any written notice or communication alleging the same; and the Company and the Company Subsidiaries have taken reasonable measures to prevent the unauthorized dissemination or publication of their confidential information and, to the extent contractually required to do so, the confidential information of third parties in their possession.

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4.12 Internal Controls. Except as set forth in Section 4.12 of the Disclosure Schedule, the Company and the Company Subsidiaries maintain a system of internal accounting control over financial reporting (as such term is defined in Rule 12a-15(f) under the Exchange Act) that complies with the Exchange Act and has been designed by the Company’s principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP. Since the end of the Company’s most recent audited fiscal year, there has been (a) except as disclosed in Section 4.12 of the Disclosure Schedule, no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (b) no change in the Company’s internal control over financial reporting that has materially adversely affected, or is reasonably likely to materially adversely affect, the Company’s internal control over financial reporting.

4.13 Financial Statements; Controls; Information Provided.

(a) Except as set forth in Section 4.13 of the Disclosure Schedule, the financial statements and schedules of the Company, and the related notes thereto, included in the Filed SEC Reports have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and present fairly in all material respects the consolidated financial position of the Company as of the respective dates of such financial statements and schedules, and the consolidated results of operations and cash flows of the Company for the respective periods covered thereby, subject only to any changes that may result from the Financial Restatement (except in the case of unaudited financial statements, for the effect of normal year-end adjustments). The financial statements and schedules of the Company, and the related notes thereto, to be filed in any SEC Reports following the date hereof (including financial statements in SEC Reports for fiscal year ending December 31, 2016, December 31, 2015, and, if applicable, December 31, 2014 that are revised in connection with the Financial Restatement (the “Restated Financial Statements”) will be prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and will present fairly in all material respects the consolidated financial position of the Company as of the respective dates of such financial statements and schedules, and the consolidated results of operations and cash flows of the Company for the respective periods covered thereby.

(b) To the Company’s Knowledge, as of the date of this Agreement the financial information set forth or identified in Section 4.13(b) of the Disclosure Schedule (excluding estimates, projections, forecasts, business plans or cost-related plans that are forward-looking in nature or other forward-looking information and changes resulting from the Restated Financial Statements) does not include any untrue statement of material fact or omit to state any material fact in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) There are no contracts, other documents or other agreements required to be described in the Filed SEC Reports or to be filed as exhibits to the Filed SEC Reports by the Exchange Act or by the rules and regulations thereunder which have not been

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described or filed (or incorporated by reference from prior filings under the Exchange Act to the extent permitted) as required, other than those not filed as a result of the Financial Restatement.

(d) The Company is in compliance with all provisions of the Sarbanes-Oxley Act of 2002 and all rules and regulations promulgated thereunder or implementing the provisions thereof that are in effect and with which the Company is required to comply.

(e) The Company’s management has used good faith commercially reasonable efforts to provide Investor with information as to the expected nature, scope and impact of the Financial Restatement on the Company’s financial statements and financial position.

(f) None of the representations or warranties made in this Agreement (as modified by the Disclosure Schedule) and any related agreements, certificates and instruments, and none of the information made available to the Investor by the Company or the Company Subsidiaries in the electronic data room maintained by the Company specifically in connection with the purchase and sale of the Preferred Shares hereunder or any other Transactions (excluding estimates, projections, forecasts, business plans or cost-related plans that are forward-looking in nature or other forward-looking information and changes resulting from the Restated Financial Statements) contains any untrue statement of a material fact or omits any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they are or were made, not misleading.

(g) Prior to the date hereof, the Company has provided to the Investor full and complete copies of all minutes for meetings since January 1, 2016 of the Board and the Audit Committee, or, where such minutes are not final, copies of the most recent drafts of such minutes, with redactions only for matters relating to the transactions contemplated hereby and by the IL Purchase Agreement. There were no other meetings of the Board and such committees for which minutes, or draft minutes, have not been provided to the Investor prior to the date hereof.

4.14 Exchange Act Reporting. The Company has filed or furnished, as applicable, on a timely basis all forms, statements, certifications, reports and documents required to be filed with or furnished by it to the SEC pursuant to the Exchange Act on or after January 1, 2014 (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, as such statements and reports may have been amended since the date of their filing, the “SEC Reports”), other than the failure to file quarterly reports on Form 10-Q during the fiscal year ending December 31, 2017 as a result of the Financial Restatement. Each of the SEC Reports complied or, if not yet filed or furnished, will comply in all material respects with the applicable requirements of the Exchange Act and any rules and regulations promulgated thereunder. Any SEC Reports filed or furnished with the SEC subsequent to the date hereof (including the Restated Financial Statements) will not, as of the respective dates (or, if amended prior to the date hereof, as of the date of such amendment) of such SEC Reports, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or

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necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading. As of the date hereof, there are no material outstanding or unresolved comments received from the SEC with respect to any of the SEC Reports.

4.15 Compliance with Laws. The Company and the Company Subsidiaries (a) are, and for the past three (3) years have been, in compliance with, and conduct their respective businesses in conformity with, all applicable foreign, federal, state and local laws and regulations, except where the failure to so comply or conform has not had, and is not reasonably likely to result in, a Material Adverse Effect and (b) possess all licenses, franchises, permits, certificates, approvals, orders and authorizations from Governmental Authorities required by Law necessary for the Company and the Company Subsidiaries to conduct their business as currently conducted or currently planned by the Company and the Company Subsidiaries (each, a “Company Permit”), except where the failure to possess such documents, individually or in the aggregate, has not had, and is not reasonably likely to result in, a Material Adverse Effect; and neither the Company nor any of the Company Subsidiaries has as of the date of this Agreement received any verbal or written notice of any proceeding relating to the revocation or modification of, or non-compliance with, any material certificate, authorization, permit, clearance or approval.

4.16 Anti-Corruption Compliance. Neither the Company nor any of the Company Subsidiaries nor, to the Company’s Knowledge, any affiliates, directors, officers, employees, agents or Representatives of the Company or of any of the Company Subsidiaries, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any “government official” (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage; and the Company and the Company Subsidiaries and their affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such Laws and with the representations and warranties contained herein.

4.17 Insurance. The Company and each of the Company Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged, including customary amounts of stop-loss coverage for any insurance plans funded by the Company or any Company Subsidiaries; and neither the Company nor any of the Company Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not be reasonably likely to result in a Material Adverse Effect.

4.18 Sufficient Funds. Immediately following the acquisition by affiliates of Investor of Intralinks Holdings, Inc., a wholly-owned Company Subsidiary, pursuant to a

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definitive share purchase agreement entered into by the Company, an affiliate of Investor and Intralinks Holdings, Inc. on October 17, 2017 (the “IL Purchase Agreement”), (a) after giving effect to the transactions contemplated by the IL Purchase Agreement (including, without limitation, the repayment of any indebtedness of the Company required to be repaid in connection therewith) and (b) after giving effect to the termination of the IL Purchase Agreement, in the case of each of clauses (a) and (b), the Company will have sufficient funds to deposit \$87,272,394 into a custodian account specified by the Put Escrow Agent.

4.19 Related Party. There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or Indebtedness by the Company or any of the Company Subsidiaries to or for the benefit of any of the executive officers or directors of the Company. Other than as set forth in the definitive proxy statement on Schedule 14A for the 2017 annual meeting of the Company’s stockholders, no Person is or has been a party to any transaction or proposed transaction with the Company or any Company Subsidiary that would require disclosure in an SEC filing made by the Company (if such filing were being made on the date hereof) pursuant to Item 404 of Regulation S-K under the Exchange Act.

4.20 Brokers and Other Advisors. Except for Goldman, Sachs & Co. and PJT Partners (the “Company Financial Advisor”), no agent, broker, investment banker, finder, financial advisor, firm or other Person is entitled to any broker’s, finder’s, financial advisor’s or other similar fee or commission or reimbursement of expenses in connection with the Transactions based upon arrangements made by or on behalf of the Company or any Company Subsidiary.

4.21 ERISA.

(a) Neither the Company, its affiliates, nor any other entity which, together with the Company or its affiliates, would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code, has at any time maintained, sponsored or contributed to, or has or had any liability with respect to, any employee benefit plan that is subject to Title IV of ERISA, including, without limitation, any “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA), as to which there remains any unsatisfied liability on the part of the Company, any of its affiliates or any other such entity. No Reportable Event (as defined in Section 4043(c) of ERISA but excluding those events as to which the 30-day notice period is waived by applicable regulations to ERISA), has occurred with respect to any Company Plan. Each Company Plan complies in all material respects with its terms and all applicable Laws (including, without limitation, ERISA and the Code), and the Company and each of its affiliates have filed all reports, returns, notices, and other documentation required by ERISA or the Code to be filed with any Governmental Authority with respect to each Company Plan, in each case except as would not, individually or in the aggregate, be reasonably likely to result in a material liability. With respect to any Company Plan, (i) no actions, Liens, lawsuits, claims or complaints (other than routine claims for benefits) are pending or threatened, and (ii) no facts or circumstances exist that are reasonably likely to give rise to any such actions, Liens, lawsuits, claims or complaints, except as would not,

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individually or in the aggregate, be reasonably likely to result in a material liability. No event has occurred with respect to any Company Plan which would reasonably be expected to result in any material liability of the Company or any of the Company Subsidiaries to any Governmental Authority, including, without limitation, the Pension Benefit Guaranty Corporation, other than for applicable premiums. No event has occurred and no condition exists that would reasonably be expected to constitute grounds for a Company Plan to be terminated under circumstances which would cause any Lien, including, without limitation, the lien provided under Section 4068 of ERISA, to attach to any property or other asset of the Company or any of the Company Subsidiaries. No event has occurred and no condition exists that would reasonably be expected to cause any Lien, including, without limitation, the lien provided under Section 303 of ERISA or Section 430 of the Code to attach to any Property of the Company or any of the Company Subsidiaries.

(b) None of the execution of or the completion of the Transactions (whether alone or in connection with any other event(s)), would reasonably be expected to result in (i) severance pay or benefits provided upon termination after Closing or an increase in severance pay or benefits provided upon termination after Closing, (ii) any payment, compensation or benefit becoming due, or increase in the amount of any payment, compensation or benefit due, to any current or former employee, consultant or service provider of the Company or its affiliates, (iii) acceleration of the time of payment or vesting or result in funding of any compensation or benefits, (iv) any new obligation under any Company Plan, (v) any limitation or restriction on the right of Company to merge, amend, or terminate any Company Plan, or (vi) any payments which would not be deductible under Section 280G or 162(m) of the Code.

4.22 Registration Rights. Except as provided in the Investor Rights Agreement, the Company has not granted or agreed to grant, and is not under any obligation to provide, any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may be issued subsequently.

4.23 Tax Matters. All material Tax Returns required to be filed by the Company and each of the Company Subsidiaries have been timely filed, and all such Tax Returns are true, complete, and correct in all material respects. The Company and each of the Company Subsidiaries has timely paid (or has had timely paid on its behalf) all material Taxes required to be paid by it and the Company and each of the Company Subsidiaries has timely withheld from amounts owing to any employee, creditor, customer, shareholder or other third party such amounts as were required to be withheld and has timely paid such amounts to the appropriate Governmental Authority. There are no Liens for any Tax on any assets of the Company or any of the Company Subsidiaries, except for Taxes not yet due and payable. The Company is not, nor has it been during the applicable period specified in Section 897(c)(1)(a) of the Code, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code.

4.24 Solvency. Immediately after giving effect to the consummation of the purchase and sale of the Preferred Shares and the other Transactions: (i) the sum of the assets, at a fair and fair saleable valuation, of the Company and Company Subsidiaries exceeds the

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total amount of their liabilities (including all contingent liabilities); (ii) the Company and Company Subsidiaries shall not have incurred debts beyond their ability to pay such debts as such debts mature; and (iii) the Company and Company Subsidiaries shall not have unreasonably small capital with which to conduct their businesses. No transfer of property is being made by the Company and no obligation is being incurred by the Company in connection with the consummation of the purchase and sale of the Preferred Shares or any other Transactions with the intent to hinder, delay or defraud either present or future creditors of the Company or any of the Company Subsidiaries.

4.25 Acknowledgement. The Company has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the Transactions and has so evaluated the merits and risks of such investment and understands and agrees that the Stock Consideration is being transferred and delivered to the Company in reliance on a private placement exemption from registration under the Securities Act and applicable state securities Laws.

5. Representations and Warranties of the Investor. The Investor represents and warrants to the Company as of the date of this Agreement and as of the Closing Date that:

5.1 Private Placement.

(a) The Investor is (i) an “accredited investor” within the meaning of Rule 501 of Regulation D promulgated under the Securities Act; (ii) aware that the sale of the Preferred Shares and the Common Stock issuable upon conversion of the Preferred Shares being issued and sold pursuant to this Agreement (collectively, the “Securities”) to it are being made in reliance on a private placement exemption from registration under the Securities Act and applicable state securities Laws; and (iii) acquiring the Securities for its own account, not as a nominee or agent, and not with view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in or otherwise distributing the same in any manner that violates the Securities Act.

(b) The Investor understands and agrees that the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act, that such Securities have not been and, except as contemplated by the Investor Rights Agreement, will not be registered under the Securities Act and that such Securities may be offered, resold, pledged or otherwise transferred only (i) in a transaction not involving a public offering, (ii) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available), (iii) pursuant to an effective registration statement under the Securities Act or (iv) to the Company or one of the Company Subsidiaries, in each of cases (i) through (iv) in accordance with any applicable state and federal securities Laws, and that it will notify any subsequent purchaser of Securities from it of the resale restrictions referred to above, as applicable.

(c) The Investor understands that, unless sold pursuant to a registration statement that has been declared effective under the Securities Act or in compliance with Rule 144 thereunder, the Company may require that the Securities bear a legend or other

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restriction substantially to the following effect (it being agreed that if the Securities are not certificated, other appropriate restrictions shall be implemented to give effect to the following):

“THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, (THE “SECURITIES ACT”), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN A TRANSACTION NOT INVOLVING A PUBLIC OFFERING, (II) PURSUANT TO ANY OTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (IV) TO THE COMPANY OR ANY COMPANY SUBSIDIARY, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. THIS SECURITY MAY ONLY BE TRANSFERRED IN ACCORDANCE WITH THE TERMS OF THE INVESTOR RIGHTS AGREEMENT, DATED AS OF [ ], 2017, AMONG SYNCHRONOSS TECHNOLOGIES, INC. AND THE INVESTOR NAMED THEREIN.”

(d) The Investor: (i) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Securities; and (ii) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment.

(e) The Investor acknowledges that (i) it has conducted its own investigation of the Company and the terms of the Securities; (ii) it has had access to the Company’s public filings with the SEC and to certain financial and other information to inform its decision to purchase the Securities; (iii) has been offered the opportunity to conduct such review and analysis of the business, assets, condition, operations and prospects of the Company and the Company Subsidiaries and to ask questions of the Company, each to inform its decision to purchase the Securities; and (iv) any projections, estimates or forecasts of future results or events provided by or on behalf of the Company are subject to uncertainty and to the assumptions used in their preparation. The Investor further acknowledges that it has had such opportunity to consult with its own counsel, financial and tax advisors and other professional advisers as it believes is sufficient for purposes of the purchase of the Securities. The foregoing, however, does not limit or modify the representations and warranties of the Company in [Section 4](#) of this Agreement or in any certificate provided at Closing, or the right of the Investor to rely on such representations and warranties.

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(f) The Investor understands that the Company will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

5.2 **Organization.** The Investor is duly organized and is validly existing in the jurisdiction of its organization.

5.3 **Governmental Consents.** No consent, notice, approval, waiting period expiration or termination, order, or authorization of, or registration, qualification, declaration, or filing with, any federal, state, or local governmental authority on the part of such Investor is required in connection with the purchase of the Preferred Shares (and the Common Stock issuable upon conversion of the Preferred Shares) or the consummation of any of the Transactions, except for the following: (i) the compliance with applicable state securities Laws, which compliance will have occurred within the appropriate time periods; (ii) the filing with the SEC of such reports under the Exchange Act as may be required in connection with this Agreement and the Transactions, (iii) filings required under, and compliance with other applicable requirements of the HSR Act and other applicable Antitrust Laws, and (iv) such consents, approvals, orders, authorizations, registrations, qualifications, declarations, filings and notices the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect with respect to the Investor.

5.4 **Authorization; Enforceability.** The Investor has full right, power, authority and capacity to enter into this Agreement and the Investor Rights Agreement and to consummate the Transactions. The execution, delivery and performance of this Agreement and the Investor Rights Agreement have been duly authorized by all necessary action on the part of the Investor, and this Agreement has been, and the Investor Rights Agreement will at or prior to the Closing be, duly executed and delivered by the Investor and, assuming due authorization, execution and delivery of this Agreement and the Investor Rights Agreement by the Company, will constitute valid and binding obligation of the Investor, enforceable against it in accordance with its terms.

5.5 **No Default or Violation.** The execution, delivery, and performance of and compliance with this Agreement and the Investor Rights Agreement, and the issuance and sale of the Preferred Shares will not (i) result in any default or violation of the certificate of incorporation, bylaws, limited partnership agreement, limited liability company operating agreement or other applicable organizational documents of the Investor, (ii) result in any default or violation of any agreement relating to its material Indebtedness or under any mortgage, deed of trust, security agreement or lease to which it is a party or in any default or violation of any material judgment, order or decree of any Governmental Authority or (iii) be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any such provision, require any consent or waiver under any

such provision, or result in the creation of any Lien upon any of the properties or assets of the Investor pursuant to any such provision, or the suspension, revocation, impairment or forfeiture of any material permit, license, authorization, or approval applicable to the Investor, its business or operations, or any of its assets or properties pursuant to any such provision, except in the case of clauses (ii) and (iii) as would not, individually or in the aggregate, reasonably be expected to prevent

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or materially delay or materially impair the ability of the Investor to consummate the Transactions.

5.6 **Financial Capability.** The Investor will have at the Closing the funds necessary to purchase the Preferred Shares at Closing on the terms and conditions contemplated by this Agreement.

5.7 **Equity Financing.** The Investor has delivered to the Company a true, correct and complete copy, as of the date of this Agreement, of an executed commitment letter dated as of the date of this Agreement (the "**Equity Commitment Letter**") from the Equity Investors to invest, subject to the terms and conditions therein, cash in the aggregate amount set forth therein in the Investor (the "**Equity Financing**"). As of the date of this Agreement, the Equity Commitment Letter has not been amended or modified, no such amendment or modification is contemplated and the commitments contained therein have not been withdrawn or rescinded in any respect. As of the date of this Agreement, the Equity Commitment Letter, in the form so delivered, is in full force and effect and is a legal, valid and binding obligation of the Investor, enforceable in accordance with their terms, and, to the knowledge of the Investor, the other parties thereto, except that such enforceability (a) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally; and (b) is subject to general principles of equity, whether considered in a proceeding at law or in equity. The Company is not obligated to pay any commitment fees or other fees in connection with the Equity Commitment Letter that are payable on or prior to the date of this Agreement. As of the date of this Agreement, the Investor has no reason to believe that it will be unable to satisfy any term or condition of closing to be satisfied by it contained in the Equity Commitment Letter. The net proceeds contemplated by the Equity Financing will, together with cash and cash equivalents available to the Investor and the Stock Consideration, be sufficient to pay the Purchase Price upon the terms contemplated by this Agreement. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of the Investor under any term or condition of the Equity Commitment Letter or that would, individually or in the aggregate, permit the Equity Investors to terminate, or to not make the initial funding of the facilities to be established thereunder upon satisfaction of all conditions thereto. Except as set forth in the Equity Commitment Letter, there are no (i) conditions precedent to the respective obligations of the Equity Investors to fund the full amount of the Equity Financing; or (ii) contractual contingencies under any agreements, side letters or arrangements relating to the Equity Financing to which either the Investor or any of its affiliates is a party that would permit the Equity Investors to reduce the total amount of the Equity Financing, or that would materially and adversely affect the availability of the Equity Financing. The Investor acknowledges and agrees that its obligations hereunder are not subject to any conditions regarding the Investor's or any other Person's ability to obtain financing for the consummation of the Transactions.

5.8 **Interested Stockholder.** Neither the Investor nor any of its "affiliates" or "associates" is, nor at any time during the three (3) years prior to (and including) the date

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of this Agreement has been, an "interested stockholder" of the Company (as such terms in quotations are used in Section 203 of the DGCL).

5.9 **Ownership of Shares.** As of the date hereof, the Investor and its affiliates beneficially own 5,994,667 shares of Common Stock.

**6. Conditions to the Investor's Obligations at Closing.** The obligation of the Investor to purchase the Preferred Shares at the Closing is subject to the fulfillment or waiver (if permissible by applicable Law) on or before the Closing of each of the following conditions:

6.1 No Law, injunction, judgment or ruling enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority (collectively, "Restraints") shall be in effect enjoining, restraining, preventing or prohibiting consummation of the Transactions.

6.2 The representations and warranties of the Company set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct as of the date of this Agreement and as of the Closing Date with the same effect as though made on and as of the Closing Date (except to the extent that such representation and warranty expressly speaks only as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except where the failure to be true and correct would not have a Material Adverse Effect; provided, however, that, notwithstanding the foregoing, each of the Fundamental Representations and the representations and warranties set forth in **Section 4.24**, shall be true and correct in all respects except for de minimis inaccuracies as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date. The Investor shall have received a certificate signed on behalf of the Company by an executive officer of the Company (and in any event, in respect of the representations set forth in **Section 4.24**, by the Chief Financial Officer of the Company) to such effect.

6.3 The Company shall have performed in all material respects all obligations, agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date, and the Investor shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

6.4 Since the date of this Agreement, there shall not have been any occurrence, event, change, effect or development that would have, or would reasonably be expected to have, a Material Adverse Effect with respect to the Company.

6.5 Prior to, or simultaneous with, the Closing, the Company shall have adopted and filed with the Secretary of State of the State of Delaware the Series A Certificate of Designations.

6.6 The Company shall have executed and delivered the Investor Rights Agreement, in the form attached as Exhibit A hereto.



- 6.7 Prior to or at the Closing, the Company shall have paid Investor the Expense Reimbursement pursuant to Section 10.11.
- 6.8 The Investor shall be satisfied, in its reasonable discretion, with all due diligence facts and developments relating to the Company, its affiliates or their respective officers, employees or directors, including with respect to any actions, inquiries or investigations by any Governmental Authority (other than in connection with any Governmental Authority's investigation of the Transactions under any Antitrust Laws which is covered in Section 8.7) and the Company's handling thereof, including with respect to corporate governance and disclosure matters.
- 6.9 All waiting periods (and any extensions thereof) applicable to the Transactions under the HSR Act shall have been terminated or shall have expired and all other approvals under applicable Antitrust Laws (each as set forth on Schedule 6.9) shall have been obtained.
- 6.10 The Board and the Nominating and Corporate Governance Committee of the Board shall be composed, simultaneously with the Closing, as contemplated by Section 8.14.
- 6.11 The individual(s) to be agreed upon pursuant to Section 8.14 to serve in such capacity or capacities shall be appointed as Chief Executive Officer of the Company and as Chairman of the Board, in each case, prior to or simultaneously with the Closing.
- 6.12 The Company shall have executed and delivered to the Investor a management rights letter on customary terms to be agreed upon among the parties.
- 6.13 The Company shall have executed and delivered to the Investor the Indemnity and Expense Reimbursement Agreement.
- 6.14 The acquisition of Intralinks Holdings, Inc. by affiliates of Investor pursuant to the IL Purchase Agreement (the "IL Closing") shall have been consummated or the IL Purchase Agreement shall have been terminated (the "IL Termination" and the earlier of the IL Closing and IL Termination, the "IL Trigger Event").
- 6.15 The Company shall have taken all actions necessary to amend its Amended and Restated Bylaws in order to provide that the Series A Preferred may take actions by written consent in lieu of a meeting (the "Bylaws Amendment").
- 6.16 Provided that the Common Stock shall not have been delisted therefrom, the shares of Common Stock issuable upon the conversion of the Preferred Shares and the PIK Shares shall have been approved for listing on the Exchange, subject to official notice of issuance.

**7. Conditions to the Company's Obligations at Closing.** The obligations of the Company to issue, sell and deliver to the Investor the Preferred Shares at the Closing are subject to the fulfillment or waiver (if permissible by applicable Law) on or before the Closing of each of the following conditions:

- 7.1 The Investor shall have paid to the Company the Purchase Price against delivery of the Preferred Shares.
- 7.2 No Restraint shall be in effect enjoining, restraining, preventing or prohibiting consummation of Transactions.
- 7.3 The representations and warranties of the Investor set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct as of the date of this Agreement and as of the Closing Date with the same effect as though made on and as of the Closing Date (except to the extent that such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except where the failure to be true and correct would not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the performance by Investor of its obligations hereunder or the consummation by the Investor of the Transactions. The Company shall have received a certificate signed on behalf of the Investor by an executive officer of the Investor to such effect.
- 7.4 The Investor shall have performed in all material respects all obligations, agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of the Investor by an executive officer of the Investor to such effect.
- 7.5 The Investor shall have executed and delivered the Investor Rights Agreement, in the form attached as Exhibit A hereto.
- 7.6 All waiting periods (and any extensions thereof) applicable to the Transactions under the HSR Act shall have been terminated or shall have expired and all other approvals under applicable Antitrust Laws (each as set forth on Schedule 6.9) shall have been obtained.

**8. Covenants.** The Company and the Investor, as applicable, hereby covenant and agree, for the benefit of the other party to this Agreement and the other party's respective assigns, as follows:

- 8.1 Use of Proceeds. The Company shall apply the net proceeds from the issuance and sale of the Preferred Shares for general corporate purposes, including (x) funding working capital, (y) the repayment of indebtedness and (z) the payment of fees and expenses in connection with the Transactions.
- 8.2 Reservation of Common Stock; Issuance of Shares of Common Stock. For as long as any of the Preferred Shares and PIK Shares remain outstanding, the Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock or shares of Common Stock held in treasury by the Company, for the purpose of effecting the conversion of the Preferred Shares and PIK Shares, the full number of shares of Common Stock then issuable upon the conversion of all Preferred Shares and PIK Shares (in each case after giving effect to all anti-dilution adjustments) then outstanding. All shares of Common Stock delivered upon conversion

or repurchase of the Preferred Shares and PIK Shares shall be newly issued shares or shares held in treasury by the Company, shall have been duly authorized and validly issued and shall be fully paid and nonassessable, and shall be free from preemptive rights and free of any Lien or adverse claim.

8.3 Transfer Taxes. The Company shall pay any and all documentary, stamp or similar issue or transfer Tax due on (x) the issue of the Preferred Shares at the Closing and (y) the issue of shares of Common Stock upon conversion of the Preferred Shares and PIK Shares. However, in the case of conversion of Preferred Shares or PIK Shares, the Company shall not be required to pay any Tax that may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the holder of the Preferred Shares and PIK Shares to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such Tax, or has established to the satisfaction of the Company that such Tax has been paid.

8.4 Public Disclosure. On the date of this Agreement, or within 24 hours thereafter, both of the Investor and the Company may issue a press release in a form mutually agreed to by the other party. No other written release, public announcement or filing concerning the purchase of the Preferred Shares and the other Transactions shall be issued, filed or furnished, as the case may be, by any party without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), except as such release, announcement or filing as may be required by Law (including as may be required in connection with any notifications that are required under any Antitrust Law in connection with the Transactions described herein or to respond to any request for information or documents from a Governmental Authority investigating any of the Transactions described herein under any Antitrust Law) or the rules or regulations of any securities exchange, in which case the party required to make the release or announcement shall, to the extent reasonably practicable, allow the other party reasonable time to comment on such release or announcement in advance of such issuance. The provisions of this Section 8.4 shall not restrict the ability of a party to summarize or describe the Transactions in any SEC Report (including pursuant to Section 13(d) of the Exchange Act) so long as the other party is provided a reasonable opportunity to review such disclosure in advance.

8.5 Tax Related Covenants.

(a) The Company and the Investor acknowledge and agree that it is intended that the Series A Preferred not constitute “preferred stock” within the meaning of Section 305 of the Code, and the Treasury Regulations promulgated thereunder. Absent a change in Law or Internal Revenue Service practice or a contrary determination (as defined in Section 1313(a) of the Code) the Investor and the Company agree not to treat the Series A Preferred as “preferred stock” within the meaning of Section 305 of the Code and Treasury Regulations Section 1.305-5 for United States federal income Tax reporting and withholding Tax purposes and shall not take any Tax position inconsistent with such treatment.

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(b) Notwithstanding the foregoing, the Company shall be entitled to deduct and withhold from amounts otherwise payable on or with respect to the Series A Preferred such amounts as are required to be deducted and withheld with respect to the making of such payment under the Code and the Treasury Regulations promulgated thereunder, or any provision of state, local or foreign Tax law; provided, however, that (1) the Company acknowledges and agrees that, under current United States federal income tax law, no withholding is required to be made in respect of any amounts paid on or with respect to the Series A Preferred (other than potential United States federal withholding with respect to payments of cash dividends) and (2) prior to the withholding of any amounts hereunder, the Company shall give the Investor commercially reasonable advance notice of any intended withholding (and the basis for such withholding) and the opportunity to provide such forms, certificates, or other documentation to establish any entitlement to a reduction of or exemption from such withholding. To the extent that amounts are so deducted and withheld, and timely paid over to the appropriate governmental authority, such withheld amounts shall be treated as having been paid to the person in respect of which such deduction and withholding was made.

(c) The Company and the Investor intend that, for United States federal income tax purposes, (1) in the event that the Put Right is not exercised and the Stock Consideration is exchanged for the Preferred Shares pursuant to this Agreement, then such exchange shall qualify as a “recapitalization” within the meaning of Section 368(a)(1)(E) of the Code and (2) if the Put Right is exercised and the Put Shares are purchased by the Company in accordance with Section 8.19 of this Agreement, such purchase shall qualify as a “redemption” within the meaning of Section 302 of the Code and, in each case, except as required pursuant to a “determination” within the meaning of Section 1313(a) of the Code (or any similar provision of state, local or foreign Law), neither the Company nor the Investor shall take any position inconsistent with such treatment.

8.6 Further Assurances. Each of the Investor and the Company will cooperate and consult with each other and use commercially reasonable efforts to prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to obtain all necessary permits, consents, orders, approvals and authorizations of, or any exemption by, all third Persons required to consummate the Transactions. In the event that any Governmental Authority requires stockholder approval to give full effect to the rights of the Investor (or any holder of the Series A Preferred) as set forth in this Agreement, the Investor Rights Agreement or the Series A Certificate of Designations, the Investor at its option may require that the Company (i) modify such documents, and the rights of Investor (and other holders of the Series A Preferred) thereunder, as proposed by the Investor to permit the Transaction to occur without stockholder approval, or (ii) amend such documents in a manner reasonably acceptable to the Investor, such that such stockholder approval would not be required at the Closing and require the Company to promptly seek, and use reasonable best efforts to obtain as promptly as practicable, stockholder approval to reinstate the terms and rights that were removed or modified in order to consummate the Transactions without a stockholder vote. The parties hereto agree that the purpose of any such modifications, and the extent of them, shall be to replicate, to the greatest extent possible, the rights of

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the Investor (or any holder of the Series A Preferred) contained in such documents as of the date of this Agreement. The proxy statement distributed to Company stockholders in connection with any stockholder vote contemplated hereby shall include the Board’s recommendation that stockholders

vote in favor of any such resolution, unless, based upon advice of counsel and after consultation with Investor, the Board shall conclude that to do so would violate its fiduciary duties. In the event the requisite stockholder approval (if any) shall fail to be obtained at the first stockholder meeting to consider the matter, the Investor shall have the right either to request that the Company seek to obtain such vote at a further meeting to be held within four (4) months of the date of the first meeting, or that the Company agree to implement such modifications to the Investor Rights Agreement and the Series A Certificate of Designations as are acceptable to the Investor to eliminate the requirement for stockholder approval. In the event that, at the second stockholder meeting to consider the matters described herein, such stockholder approval shall fail to be obtained, the parties shall implement the changes described in the preceding sentence to the extent that Governmental Authority would not require stockholder approval with respect to such changes.

#### 8.7 Antitrust Matters.

(a) The parties hereto shall cooperate with each other and use their respective reasonable best efforts to take, or cause to be taken, all reasonable actions, and to do, or cause to be done, all reasonable things necessary, proper or advisable under any applicable Laws to (i) consummate and make effective as promptly as practicable, and in any event by or before the Outside Date, the Transactions, and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions on or before the Outside Date.

(b) The parties shall provide or cause to be provided (including by their “ultimate parent entities” as that term is defined in the HSR Act or any similar term under any other Antitrust Laws) as promptly as practicable to any Governmental Authority information and documents requested by such Governmental Authority to permit consummation of the Transactions, including (i) filing any notification and report form and related material required under the HSR Act as promptly as practicable, but in no event later than 10 business days after the date hereof; (ii) filing any notification required under any other Antitrust Law as promptly as practicable; and (iii) supply as soon as practicable any additional information and documentary material that may be requested by a Governmental Authority pursuant to the HSR Act or any other applicable Antitrust Laws.

(c) In furtherance and not in limitation of the foregoing, if and to the extent necessary to avoid any impediment under any Antitrust Law to closing on or before the Outside Date, the parties shall use reasonable best efforts to obtain any consent, authorization, approval, order, waiting period expiration or termination, or exemption by, any Governmental Authority, necessary to be obtained prior to the Closing, and to prevent the entry, enactment, or promulgation of any preliminary or permanent injunction or other order, decree, or ruling that would adversely affect the ability of the parties to consummate the Transactions, provided, however, that nothing in this this Section 8.7

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shall require the Investor to (i) offer, propose, negotiate, commit to or effect, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of any business, product line, or asset of the Investor or its affiliates, (ii) take or commit to any action that after the Closing Date would limit Investor’s freedom of action with respect to any business, product line, or asset of the Investor or its affiliates; or (iii) commit to any amendment to the Certificate of Designation or the Investor Rights Agreement that Investor reasonably determines to be material to its operations as a whole.

(d) Subject to applicable confidentiality restrictions or restrictions required by Law or by any Governmental Authority, the Investor, on the one hand, and the Company, on the other, shall each (i) provide to the other upon request copies of all filings and submissions made by such party (and its advisers) and all substantive correspondence between it (or its advisers) and any Governmental Authority or third party, relating to the Transactions; (ii) permit authorized representatives of the other to attend any meeting, communication, or conference with any Governmental Authority related to the Transactions; and (iii) promptly advise each other upon receiving any communication from any Governmental Authority or third party whose consent is required for consummation of any of the Transactions relating to any such consent or approval. Notwithstanding anything in the foregoing to the contrary, the parties may, as they deem advisable and necessary, redact or otherwise limit their disclosures to the other party (1) to remove references concerning the valuation of the Company or other competitively sensitive information, (2) as necessary to comply with contractual arrangements or regulatory requirements, and (3) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns. The parties may also designate any competitively sensitive materials provided to the other under this Section 8.7 (including any documents produced to a Governmental Authority in response to Item 4c or Item 4d of the HSR notification) as “outside counsel only,” in which case such materials and the information contained therein shall be given only to outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient without the advance written consent of the party providing such materials.

(e) Notwithstanding anything in this Section 8.7 to the contrary, the parties hereto acknowledge that the Investor or its designee will control and direct, and the Company shall cooperate reasonably, subject to applicable Law, with such direction and control, regarding the filings (including where to file), strategies, process, negotiation of settlements (if any), and related proceedings contemplated by this Section 8.7. For purposes hereof, “Antitrust Laws” means any antitrust, competition or trade regulation Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, including, but not limited to, the HSR Act.

8.8 Conduct of Business. Except as expressly permitted or required by this Agreement or as required by applicable Law, during the period from the date of this Agreement until the earlier of (x) termination of this Agreement in accordance with Section 9.1 and (y) the Closing, unless the Investor otherwise consents in writing, the Company shall, and shall cause the Company Subsidiaries to, conduct their businesses only in the ordinary course of business in all material respects consistent with past

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practice. Without limiting the foregoing, except as set forth in the Disclosure Schedule, as expressly permitted or required by this Agreement or as required by applicable Law or as consented to in writing by the Investor, the Company shall not, and shall not permit any of the Company Subsidiaries to, between the date of this Agreement and the earlier to occur of the termination of this Agreement in accordance with Section 9.1 and the Closing, take any of the following actions:

(a) take any action that, if taken following the Closing, would require the approval of the holders of the Series A Preferred;

(b) (i) create, issue, sell or grant or authorize the issuance, sale or grant of any equity securities of the Company or any of the Company Subsidiaries, except for the granting of options to employees to purchase shares of Common Stock or the issuance of shares of Common Stock required to be issued upon exercise of options that are outstanding on the date hereof in accordance with their terms on the date hereof or (ii) amend any term of any equity securities of the Company or any of the Company Subsidiaries (in each case, whether by merger, consolidation or otherwise);

(c) make, or permit any Company Subsidiary to make, any loans, advances or capital contributions to or investments in any other Person (other than a wholly owned Company Subsidiary domiciled in the United States);

(d) amend or propose to amend the Company Charter Documents or the Subsidiary Charter Documents;

(e) adopt a plan of agreement of complete or partial liquidation or dissolution or resolutions providing for a complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company or any Company Subsidiary;

(f) (i) enter into, terminate or materially amend or modify (other than extensions at the end of a term in the ordinary course and other than in the ordinary course of business consistent with past practice) any Company Material Contract or Contract that, if in effect on the date hereof, would have been a Company Material Contract, or (ii) waive any material term of or any material default under, or release, settle or compromise any material claim against the Company or material liability or obligation owing to the Company, or any benefit of the Company, under any Company Material Contract;

(g) amend or modify the letter of engagement of the Company Financial Advisor in a manner that materially increases the fee or commission payable by the Company;

(h) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of the Company's or any Company Subsidiary's capital stock (other than dividends or distributions made by a Company Subsidiary to the Company or another Company Subsidiary);

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(i) take any action that would reasonably be expected to prevent or materially impede, interfere with, hinder or delay the consummation of the Transactions; or

(j) agree, resolve or commit to take any of the foregoing actions.

8.9 **No Control of the Company's Business.** The Investor acknowledges and agrees that: (i) nothing contained in this Agreement shall give the Investor, directly or indirectly, the right to control or direct the Company's operations prior to the Closing and (ii) prior to the Closing, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' operations.

8.10 **Transaction Litigation.** The Company shall give the Investor the opportunity to participate in (but not to control) the defense or settlement of any stockholder litigation against the Company or any of its directors or officers relating to this Agreement or the Transactions (and, in any event, no such settlement of any stockholder litigation shall be agreed to without the Investor's prior written consent). Each of the Investor and the Company shall notify the other promptly (and in any event within 48 hours) of the commencement of any such stockholder litigation relating to this Agreement or the Transactions of which it has received notice, and shall keep the other reasonably informed regarding any such stockholder litigation relating to this Agreement or the Transactions.

8.11 **Listing.** The Company shall use its commercially reasonable efforts to take, or cause to be taken, all actions necessary to continue to have the Common Stock (including all shares of Common Stock issuable upon conversion of the Preferred Shares and PIK Shares) listed on the Nasdaq Global Select Market (the "Exchange"), and the Investor shall reasonably cooperate with the Company in connection with the foregoing, including providing to the Company or the Exchange such information reasonably requested by the Company that is necessary in connection therewith. The Company shall not voluntarily delist the Common Stock from the Exchange. In the event that the Common Stock is delisted from the Exchange, the Company shall use its reasonable best efforts to take, or cause to be taken, all actions necessary to have such shares of Common Stock to be promptly listed for trading on any of the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, The New York Stock Exchange or any other United States national securities exchange. The Company shall invite authorized representatives of the Investor to attend any meeting, communication, or conference with representatives of the Exchange related to the Transactions and provide the Investor and its authorized representatives with reasonable advanced notice of any such meeting, communication or conference. The Company shall provide the Investor with copies of all filings and submissions made by the Company (and its advisers in such capacity) and all substantive correspondence between it (or its advisers in such capacity) and representatives of the Exchange, relating to the Transactions. The Investor and its counsel shall be given reasonable advanced notice of and a reasonable opportunity to review and comment on any filings or communications with the Exchange.

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8.12 **Access to Information.** Prior to the Closing, upon reasonable notice and during normal business hours, the Company shall, and shall cause the officers and employees of the Company, to, (a) afford the officers, employees and authorized agents and representatives of the Investor reasonable access to the employees, offices, properties, books and records of the Company, representatives or advisors of the Company, including its auditors (to the extent the auditors consent to such access) and (b) furnish to the officers, employees and authorized agents and representatives of the Investor such additional financial and operating data and other information (including with respect to the Financial Restatement or any Governmental Authority investigation) regarding the assets, properties and business of the Company, or any of its employees or directors, as the Investor may from time to time reasonably request in order to assist the Investor in fulfilling its obligations under this Agreement and to facilitate the consummation of the Transactions; provided, however, (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operations or business activities of the Company; and (ii) the Company shall not be required to so confer, afford such access or furnish such copies or other information to the extent that doing so would contravene any Law, result in the breach of any confidentiality or similar agreement to which the Company is a party, the loss of protectable interests in trade secrets, or the loss of attorney-client privilege (provided that the Company

shall use its commercially reasonable efforts to allow for such access or disclosure in a manner that does not result in a breach of such agreement or a loss of attorney-client privilege, including using commercially reasonable efforts to obtain the required consent of any applicable third party or through the use of a "clean team"). The representations, warranties, agreements, covenants and obligations of the Company, and the rights and remedies that may be exercised by the Investor, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or knowledge of, the Investor or any of its Representatives.

8.13 **Restatement.** The Company shall use its commercially reasonable efforts to complete the Financial Restatement as promptly as practicable. The Company agrees to keep the Investor informed of any developments, meetings or discussions with any Governmental Authority (including the SEC) in respect of any filings, investigation or inquiry concerning the Financial Restatement and the Restated Financial Statements.

8.14 **Governance.** Prior to Closing, the Company will take such action as necessary to cause (i) the Board to be composed at Closing as provided in Section 11 of the Investor Rights Agreement and (ii) the Nominating and Governance Committee of the Board to be composed at the Closing as provided in Section 11 of the Investor Rights Agreement. Prior to the Closing, the Company and the Investor shall in good faith agree upon the individual(s) to serve as Chief Executive Officer of the Company and as Chairman of the Board, in each case as of the Closing. The Company and the Investor shall execute and deliver the Investor Rights Agreement in the form attached as Exhibit A concurrently with the Closing.

8.15 **Management Rights Letter.** The Company shall use its reasonable best efforts to deliver to the Investor, at or prior to Closing, a management rights letter on customary terms to be agreed upon among the parties.

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8.16 **Indemnity and Expense Reimbursement Agreement.** The Company shall execute and deliver, at or prior to Closing, an Indemnity and Expense Reimbursement Agreement in the form agreed to by the parties thereto prior to the execution of this Agreement (the "Indemnity and Expense Reimbursement Agreement").

8.17 **Anti-Takeover Provisions.** Prior to Closing, the Company and the Board shall take all necessary action, if any in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company Charter Documents or the DGCL, including Section 203 of the DGCL, that is or could become applicable to Investor as a result of Investor and the Company fulfilling their respective obligations or exercising their respective rights under this Agreement, including as a result of the issuance or ownership of the Preferred Shares and PIK Shares, as the case may be, contemplated by this Agreement.

8.18 **Certificate of Designations.** Prior to the Closing, the Company shall have adopted and filed with the Secretary of State of the State of Delaware a Certificate of Designations of the Series A Preferred in the form attached as Exhibit B (the "Series A Certificate of Designations").

8.19 **Put Right.**

(a) The Investor shall have the right, exercisable in accordance with this Section 8.19, to require the Company to purchase from the Investor and/or its Affiliates up to an aggregate of 5,994,667 shares of Common Stock (the "Put Right") for a purchase price per share equal to \$14.56 in cash, subject to adjustment in the event of any stock split or stock dividend (such amount per share, the "Per Share Put Price"), (corresponding to an aggregate purchase price of \$87,272,394 in the event the Investor shall exercise the Put Right in respect of 5,994,667 shares of Common Stock).

(b) The Put Right shall be exercisable by the Investor by written notice delivered to the Company (a "Put Notice") not later than the close of business on the fifth (5th) business day following the date of termination of this Agreement. The Put Notice (if any) shall set forth the number of shares of Common Stock which the Investor requires the Company to purchase (the "Put Shares") and the closing date for the purchase and sale of the Put Shares (the "Put Closing Date"), which date shall be a business day not earlier than two (2) business days following the date of delivery of the Put Notice.

(c) The closing of the purchase and sale of the Put Shares (the "Put Closing") shall take place at 10:00 a.m., Eastern Time, on the Put Closing Date or such other day consented to in writing by the Investor. At the Put Closing, (i) the Investor shall transfer, or shall cause to be transferred, to the Company, against payment therefor, the Put Shares and (ii) the Company shall, by wire transfer of immediately funds, deliver to the Investor cash in an amount equal to the number of Put Shares multiplied by the Per Share Put Price (such product, the "Aggregate Put Price"), which obligation the Company may

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satisfy by release of funds from the Put Escrow Account pursuant to Section 8.20(b)(i) to the extent of funds actually released to the Investor.

8.20 **Put Escrow Agreement.**

(a) Effective as of immediately prior to or substantially concurrently with the first to occur of the consummation of the acquisition of Intralinks Holdings, Inc by affiliates of Investor pursuant to the IL Purchase Agreement or the termination of the IL Purchase Agreement, (i) the Investor and the Company shall enter into the Put Escrow Agreement with the Put Escrow Agent and shall deliver any documents or instruments required thereunder to be delivered to the Put Escrow Agent in connection with the execution thereof and (ii) the Company shall deposit, or cause to be deposited, into the escrow account established by the Put Escrow Agent for such purpose (such escrow account, the "Put Escrow Account"), \$87,272,394 in cash to be held, safeguarded and released by the Put Escrow Agent, pursuant to the terms of the Put Escrow Agreement.

(b) The Put Escrow Agreement shall contain the terms set forth in this Section 8.20(b) and such other customary terms as shall be agreed among the Investor, the Company and the Put Escrow Agent. The Put Escrow Agreement shall provide, among other matters, that:

(i) in the event the Investor shall have exercised the Put Right, upon receipt of a written instruction from the Investor delivered to the Put Escrow Agent and the Company, the Put Escrow Agent shall release from the Put Escrow Account (A) at or prior to the

Put Closing, funds in an amount equal to the Aggregate Put Price to (or at the direction of) the Investor, or such lesser amount as shall constitute the entire amount of Put Escrow Funds then held in the Put Escrow Account and (B) promptly following the Put Closing any remaining funds then held in the Put Escrow Account;

- (ii) in the event the Closing of the purchase and sale of the Preferred Shares hereunder shall occur, at such Closing (subject to the occurrence thereof) upon receipt of a written instruction from the Company delivered to the Put Escrow Agent and the Investor, the Put Escrow Agent shall release to (or at the direction of) the Company all funds then held in the Put Escrow Account;
- (iii) the Company shall irrevocably grant to the Investor (and not grant to any other person, or cause or permit any other person to obtain) a perfected, first priority security interest in and lien on, all of the Company's right, title and interest in the Put Escrow Account, the Put Escrow Fund, all financial assets and other property from time to time placed or deposited in the Put Escrow Account, and all proceeds of any of the foregoing (collectively, the "Put Collateral"), in order to secure the Put Right.

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(c) It is the intention of the parties hereto that the Put Escrow Agreement create a true escrow, and the Company has no ownership of, or rights in, the Put Escrow Account or the Put Escrow Funds other than the limited contractual right to receive a portion of the Put Escrow Funds under the circumstances specified in Section 2.3.

(d) The fees and costs of the Put Escrow Agent shall be paid by the Company.

#### 8.21 Certain Payments; Information.

(a) In respect of the period beginning on the date of this Agreement and ending on the earlier of the Closing Date or termination of this Agreement (the "Monitoring Period"), the Company shall pay to the Investor, in each case payable in accordance with Section 8.19(c), a monthly monitoring and oversight fee in the amount of \$750,000 (the "Monitoring Fee"); provided, that (i) the amount of the first Monitoring Fee shall be prorated based on the number of days from and including the date of this Agreement through (and including) October 31, 2017 divided by 31, and (ii) the amount of the last Monitoring Fee shall be prorated based on the number of days from and including the first day of the month in which the Closing Date or the date of termination of this Agreement, as applicable, occurs through (and including) the last day of the Monitoring Period.

(b) During the Monitoring Period, in addition to the rights of the Investor pursuant to Section 8.12, the Company shall provide to the Investor monthly financial statements of the Company and the Company Subsidiaries, weekly accounting and legal status updates, and such other information concerning the business, condition (financial or otherwise), assets, liabilities and results of operations of the Company and the Company Subsidiaries as the Investor may reasonably request, including for the purpose of evaluating the status of the condition set forth in Section 6.8, such information to be provided to the Investor, in the event such information is also provided to senior management, substantially concurrently with its provision to senior management, or otherwise on a prompt and timely basis. During the Monitoring Period, the Investor shall be given reasonable advance notice of and a reasonable opportunity to review any communications with any Government Authority or self-regulatory organization, if any, that is investigating or has requested information from the Company, its employees, or its affiliates. Notwithstanding the foregoing, Section 8.7 governs the parties' obligations and rights with respect to information exchanges between them related to communications with any Government Authority investigating the transactions described herein under any Antitrust Laws. In addition, during the Monitoring Period the Company shall provide the Investor with memoranda summarizing any oral communications with, copies of all written correspondence with, and copies of all presentations to representatives of any Government Authority or self-regulatory organization that is investigating or has requested information from the Company, its employees, or its affiliates.

(c) The Monitoring Fee shall be payable in arrears not later than the close of business on the 5<sup>th</sup> business day following the last day of the month in respect of which such fee is payable or, in the case of the Monitoring Fee payable in respect of the month

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in which the last day of the Monitoring Period occurs, on the 5<sup>th</sup> business day following such last day of the Monitoring Period (or, in each case if the applicable payment date is not a business day, on the next succeeding business day), by wire transfer of immediately funds to an account designated from time to time by the Investor, and if not timely paid shall bear interest at a rate of 8% per annum from the scheduled payment date through the close of business on the date such funds are actually paid to the Investor.

## 9. Termination.

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

(a) by either the Investor or the Company, by written notice to the other party, if the Closing shall not have occurred by the 90th calendar day following the date of this Agreement (the "Outside Date"); provided, however, that in the event the Investor delivers to the Company a Delay Notice, for purposes of this Section 9.1(a), the Outside Date shall be deemed to be the close of business on the third business day following the Delayed Closing Date set forth in the Delay Notice; and provided further, however, that the right to terminate this Agreement under this Section 9.1(a) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the substantial or primary cause of, or shall have resulted in, the failure of the Closing to occur on or before such date.

(b) by either the Investor or the Company, by written notice to the other party, in the event that any Governmental Authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the Transactions and such order, decree, ruling or other action shall have become final and nonappealable .

(c) by the mutual written consent of the Investor and the Company;

(d) by the Investor, by written notice to the Company, if the Company shall have breached any of its representations or warranties or failed to perform any of its covenants or agreements set forth in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 6 and (ii) has not been waived by the Investor or is incapable of being cured prior to the termination date, or if capable of being cured, shall not have been cured within thirty (30) calendar days (but in no event later than the termination date) following receipt by the Company of written notice of such breach or failure to perform from the Investor; provided that the Investor shall not have the right to terminate this Agreement pursuant to this Section 9.1(d) if it is then in breach of this Agreement in a manner that would cause any of the conditions in Section 7 to not be satisfied;

(e) by the Company, by written notice to the Investor, if the Investor shall have breached any of its representations or warranties or failed to perform any of its covenants or agreements set forth in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 7 and (ii) is incapable of being cured prior to the termination date, or if capable of being cured, shall not have

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been cured within thirty (30) calendar days (but in no event later than the termination date) following receipt by the Investor of written notice of such breach or failure to perform from the Company; provided that the Company shall not have the right to terminate this Agreement pursuant to this Section 9.1(e) if it is then in breach of this Agreement in a manner that would cause any of the conditions in Section 6 to not be satisfied;

(f) by the Company, following the IL Termination, if any; or

(g) by notice given by the Investor to the Company of the non-satisfaction of the condition set forth in Section 6.8.

9.2 Effect of Termination Prior to Closing. In the event of termination of this Agreement prior to the Closing as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto; provided that nothing herein shall relieve any party hereto from liability for any willful breach of this Agreement or Fraud; and provided, further, that notwithstanding the foregoing, the terms of Section 8.4, Section 8.19, Section 8.20, Section 8.21(b), Section 10.1, Section 10.2, Section 10.5, Section 10.6, Section 10.7, Section 10.8, Section 10.9, Section 10.10, Section 10.11, Section 10.12, Section 10.13, Section 10.14, Section 10.15 and this Section 9.2 shall remain in full force and effect and shall survive any termination of this Agreement.

## 10. Miscellaneous.

10.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

10.2 Specific Enforcement; Jurisdiction; Non-Recourse.

(a) The parties agree that irreparable damage would occur and the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, except as provided in the following sentences. It is accordingly agreed that (i) the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement from the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware), without proof of damages, without bond or other security being required, this being in addition to any other remedy to which they are entitled under this Agreement, at law or in equity, (ii) the provisions set forth in this Section 10.2 (A) are not intended to and do not adequately compensate for the harm that would result from a breach of this Agreement and (B) shall not be construed to diminish or otherwise impair

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in any respect any party's right to specific enforcement, and (iii) the right of specific enforcement is an integral part of the Transactions and without that right neither the Company nor Investor would have entered into this Agreement. Notwithstanding the foregoing, it is explicitly agreed that the Company shall only be entitled to seek or obtain an injunction, specific performance or other equitable remedies enforcing the Equity Commitment Letter to cause the Equity Financing to be funded at the Closing if all conditions are satisfied or waived and the Company has irrevocably confirmed in writing that if the Equity Financing is funded then it will take such actions that are required by it under this Agreement to cause the Closing to occur. The parties hereto further agree that (1) by seeking the remedies provided for in this Section 10.2(a), a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement (including monetary damages) in the event that the remedies provided for in this Section 10.2(a) are not available or otherwise are not granted, and (2) nothing set forth in this Section 10.2(a) shall require any party hereto to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 10.2(a) prior or as a condition to exercising any termination right under Section 9 (and pursuing damages after such termination), nor shall the commencement of any legal proceeding pursuant to this Section 10.2(a) or anything set forth in this Section 10.2(a) restrict or limit any party's right to terminate this Agreement in accordance with the terms of Section 9 or pursue any other remedies under this Agreement that may be available then or thereafter.

(b) Notwithstanding anything herein to the contrary, the maximum aggregate liability of the Investor for monetary damages or otherwise in connection with this Agreement, the Equity Commitment Letter and the Transactions shall be limited to \$18,500,000. In no event shall the Company seek or permit to be sought on behalf of the Company any damages or any other recovery, judgment or damages of any kind, including consequential, indirect, or punitive damages, from any affiliate of the Investor, or any Representative, member, controlling Person or holder of any equity interests or securities of the Investor, or any of their respective affiliates, in connection with this Agreement or the Transactions. The Company acknowledges and agrees that it has no right of recovery against, and no personal liability shall attach to, in each case with respect to damages, any Person (other than the Investor to the extent provided in this Agreement), whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil, by or through a claim by or on behalf of the Company against the Investor or any affiliate

thereof, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute, regulation or applicable Law, or otherwise.

(c) The equitable remedies available to the parties hereto described in this Section 10.2 shall be in addition to, and not in lieu of, any other remedies at law or in equity that they may elect to pursue; provided, that while any party hereto may concurrently pursue both (i) a grant of specific performance in accordance with this Section 10.2 and (ii) money damages pursuant to this Agreement, under no circumstances shall such party be permitted or entitled to be awarded both a grant of specific performance and any money damages pursuant to this Agreement.

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(d) Each party hereto irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any other party hereto or its successors or assigns shall be brought and determined in the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, only if the Chancery Court declines to accept jurisdiction over a particular matter, in any state or federal court within the State of Delaware), and each party hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the Transactions. Each party agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in the State of Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in the State of Delaware as described herein. Each party irrevocably consents to the service of process outside the territorial jurisdiction of the courts referred to in this Section 10.2 in any such action or proceeding by mailing copies thereof by registered or certified United States mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to Section 10.9. However, the foregoing shall not limit the right of a party to effect service of process on the other party by any other legally available method. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS.

(e) Except as set forth in the Equity Commitment Letter, and in those instances, only to those entities explicitly set forth in the Equity Commitment Letter, all claims or causes of action (whether in contract or in tort, in law or in equity) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as parties hereto and only with respect to the specific obligations undertaken by such parties as set forth herein with respect to such parties and no other Person shall have any liability for any obligations or liabilities based upon, arising out of, or related to this Agreement or the Transactions and no Person who is not a named party to this Agreement, including without limitation any present or past director, officer, employee, incorporator, member, partner, direct or indirect equityholder (including any members, partners or stockholders), manager, employee, incorporator, controlling person, management company, general partner, affiliate, trustee, agent, attorney, advisor, permitted assign and predecessor any named party to this Agreement ("Non-Party Affiliates"), shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose damages of an entity party against its owners or affiliates) for any damages arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, non-performance, interpretation, termination, enforcement, construction or execution or any of the transactions contemplated hereby and each party hereto hereby waives and releases all such damages, claims and obligations against any such Non-Party Affiliates.

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10.3 Survival. The representations and warranties in this Agreement shall expire at the Closing and have no further force and effect, other than (a) in the event of Fraud, in which case they shall survive indefinitely, (b) the representations and warranties set forth in Sections 4.1, 4.2, 4.6, 4.7, 4.13(f), and 4.20 (such representations and warranties contained therein, the "Fundamental Representations"), which shall survive until the 90<sup>th</sup> day following the applicable statute of limitations and (c) all of the covenants or other agreements of the parties contained in this Agreement shall survive until fully performed or fulfilled, unless and to the extent that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance. Notwithstanding the foregoing, any claims asserted in writing by notice of a claim made in accordance with the provisions hereunder and seeking to be indemnified within the time periods set forth in this Section 10.3 shall survive until such claim is finally and fully resolved.

#### 10.4 Indemnification.

(a) The Company shall defend, protect, indemnify and hold harmless the Investor, its affiliates and its and their respective stockholders, partners, members, officers, directors, employees and agents (collectively, the "Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any breach of any Fundamental Representation or (ii) any breach of any of the covenants of the Company contained herein; provided, further, for the purposes of calculating the amount of Liabilities, but not for determining whether a breach of any representation or warranty has occurred for purposes of this Section 10.4, all materiality and Material Adverse Effect qualifiers shall be disregarded therefrom. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable Law.

(b) If any action shall be brought against any Indemnitee in respect of which indemnity may be sought pursuant to this Agreement, such Indemnitee shall notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing. Any Indemnitee shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnitee except to the extent that: (i) the employment thereof has been specifically authorized by the Company in writing; (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel; or (iii) in such action there is, in the reasonable opinion of such separate counsel, a material conflict on any material issue between the position of the Company and the position of such Indemnitee. The Company will not be liable to any Indemnitee under this Agreement for any settlement by an Indemnitee effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed.



(c) Notwithstanding anything herein to the contrary, the maximum aggregate liability of the Company for monetary damages or otherwise in connection with this Agreement and the Transactions shall be limited to \$185,000,000. In no event shall the Investor seek or permit to be sought on behalf of the Investor any damages or any other recovery, judgment or damages of any kind, including consequential, indirect, or punitive damages, from any affiliate of the Company, or any Representative, member, controlling Person or holder of any equity interests or securities of the Company, or any of their respective affiliates, in connection with this Agreement or the Transactions. The Investor acknowledges and agrees that it has no right of recovery against, and no personal liability shall attach to, in each case with respect to damages, any Person (other than the Company to the extent provided in this Agreement), whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil, by or through a claim by or on behalf of the Investor against the Company or any affiliate thereof, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute, regulation or applicable Law, or otherwise.

(d) Except in the case of Fraud, following the Closing, the indemnification provided by Section 10.4(a) shall be the sole and exclusive remedy for any loss, liability, demand, claim, action, cause of action, cost, damage, deficiency, tax, penalty, fine or expense, whether or not arising out of third party claims (including, without limitation, interest, penalties, reasonable attorneys' fees and expenses, court costs and all reasonable amounts paid in investigation, defense or settlement of any of the foregoing) of the Indemnitees with respect to any misrepresentation or inaccuracy in, or breach of, any Fundamental Representation; provided, however, that nothing herein shall limit a party's right to specific performance or injunctive relief in connection with another party's obligations under this Agreement.

10.5 Successors and Assigns. Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties; provided, however, that neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by either of the parties without the prior written consent of the other party, except that the Investor may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to (a) one or more of its affiliates at any time and (b) after the Closing, to Siris Capital Group, LLC or any of their affiliates in connection with a transfer of the Preferred Shares and/or PIK Shares.

10.6 No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no Person that is not a party to this Agreement (including any partner, member, shareholder, director, officer, employee or other beneficial owner of any party, in its own capacity as such or in bringing a derivative action on behalf of a party) shall have any standing as third-party beneficiary with respect to this Agreement or the Transactions.

10.7 No Personal Liability of Directors, Officers, Owners, Etc. Except for the Company's ability to enforce this Agreement, no director, officer, employee, incorporator, shareholder, managing member, member, general partner, limited partner, principal or other agent of the Investor or the Company shall have any liability for any obligations of the Investor or the Company, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the respective obligations of the Investor or the Company, as applicable, under this Agreement. Subject to Section 10.2, each party hereby waives and releases all such liability. This waiver and release is a material inducement to each party's entry into this Agreement.

10.8 Entire Agreement. This Agreement and the other documents delivered pursuant to this Agreement, including the Investor Rights Agreement, the Indemnity and Expense Reimbursement Agreement, the Put Escrow Agreement and the management rights letter to be delivered pursuant to Section 8.15, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof.

10.9 Notices. Except as otherwise provided in this Agreement, all notices, requests, claims, demands, waivers and other communications required or permitted under this Agreement shall be in writing and shall be mailed by reliable overnight delivery service or delivered by hand, facsimile or messenger as follows:

if to the Company: Synchronoss Technologies, Inc.  
200 Crossing Blvd.  
Bridgewater, NJ 08807  
Facsimile No: (908) 231-0762  
Attention: Ronald Prague, Esq., Executive  
Vice President and General Counsel  
Email: ronald.prague@synchronoss.com

with a copy to: Gunderson Dettmer Stough Villeneuve  
Franklin & Hachigian, LLP  
One Marina Park Drive, Suite 900  
Boston, MA 02210  
Facsimile No: (617) 648-9199  
Attention: Marc Dupré and Andrew Luh  
Email: mdupre@gunder.com,  
aluh@gunder.com

if to the Investor: c/o Siris Capital Group, LLC  
601 Lexington Avenue, 59th Floor  
New York, NY 10022  
Facsimile No: (212) 231-2680  
Attention: General Counsel  
Email: legalnotices@siriscapital.com |

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New York, NY 10019  
Facsimile: (212) 403-2000  
Attention: Andrew J. Nussbaum and Igor Kirman  
Email: AJNussbaum@wlrk.com  
IKirman@wlrk.com

or in any such case to such other address, facsimile number, e-mail address, or telephone as either party may, from time to time, designate in a written notice given in a like manner. Notices shall be deemed given when actually delivered by overnight delivery service, hand or messenger, or when received by facsimile or e-mail if promptly confirmed.

10.10 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of or acquiescence to any breach or default, or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default. All remedies, either under this Agreement or by Law or otherwise afforded to any holder, shall be cumulative and not alternative.

10.11 Expenses. The Company and the Investor shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the Transactions; provided that, at or prior to the earlier to occur of the Closing and the date (if any) this Agreement is terminated, the Company will reimburse the Investor for the reasonable documented out-of-pocket fees and expenses incurred by the Investor, Siris Capital Group, LLC and their respective affiliates on or before the Closing Date or the date of termination of this Agreement, as applicable, in connection with the execution of this Agreement and the Investor Rights Agreement and the purchase by the Investor of the Preferred Shares pursuant to this Agreement and other potential transactions with the Company; provided further that the Company's reimbursement obligation under this Section 10.11 shall be capped at \$5,000,000 (the "Expense Reimbursement"). For the avoidance of doubt, the Expense Reimbursement shall be reduced by any amounts paid to the Investor under Section 9.3(b) of the IL Purchase Agreement such that the total expenses reimbursed by the Company and its affiliates hereunder and pursuant to Section 9.3(b) of the IL Purchase Agreement shall in no event be greater than \$5,000,000.

10.12 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the Investor or, in the case of a waiver, by the party against whom the waiver is to be effective. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and the Company.

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10.13 Counterparts. This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile or in electronic format, each of which may be executed by less than all the parties, each of which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one instrument.

10.14 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms.

10.15 Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to in this Agreement means, unless otherwise specifically indicated, such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

10.16 No Additional Representations. Except for the representations and warranties contained in Section 4 (and the certificates contemplated by Section 6.2 and Section 6.3) and in the case of Fraud, the Investor acknowledges that neither the Company nor any Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or any Company Subsidiaries or with respect to any other information made available to the Investor in connection with the Transactions. Except for the representations and warranties contained in Section 5 (and the certificates contemplated by Section 7.3 and Section 7.4), the Company acknowledges that neither the Investor nor any Person on behalf of the Investor makes any other express or implied representation or warranty with respect to the Investor or its affiliates, the matters addressed in Section 5 or with respect to any other information made available to the Company in connection with the Transactions. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to the Investor or any other Person resulting from the distribution to the Investor, or the Investor's use of, estimates, projections, forecasts, business plans or cost-related plans that are forward-looking in nature or other forward-looking information made available

to the Investor by the Company or the Company Subsidiaries in the electronic data room maintained by the Company, specifically in connection with the purchase and sale of the Preferred Shares hereunder or any other Transactions, unless and then only to the extent that any such information is expressly included in a representation or warranty contained in Section 4. Neither the Investor nor any other Person will have or be subject to any liability or indemnification obligation to the Company or any other Person resulting from the distribution to the Company, or the Company's use of, any such information, including any information, documents, projections, forecasts or other material made available to the Company, unless and then only to the extent that any such information is expressly included in a representation or warranty contained in Section 5.

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

**SYNCHRONOSS TECHNOLOGIES, INC.**

By: /s/ Steven Waldis  
Name: Steven Waldis  
Title: Chief Executive Officer

**SILVER PRIVATE HOLDINGS I, LLC**

By: /s/ Peter Berger  
Name: Peter Berger  
Title: Authorized Signatory

SIGNATURE PAGE TO SECURITIES PURCHASE AGREEMENT

**EXHIBIT A**  
**Form of Investor Rights Agreement**

**FORM OF INVESTOR RIGHTS AGREEMENT**  
**between**

**SILVER PRIVATE HOLDINGS I, LLC**

**and**

**SYNCHRONOSS TECHNOLOGIES, INC.**

**Dated as of [        ], [    ]**

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## INVESTOR RIGHTS AGREEMENT

This INVESTOR RIGHTS AGREEMENT (this “Agreement”), dated as of [·], [·], by and between Synchronoss Technologies, Inc., a Delaware corporation (the “Company”), and Silver Private Holdings I, LLC, a Delaware limited liability company (the “Investor”).

WHEREAS, the Company and the Investor entered into a Securities Purchase Agreement, dated as of October 17, 2017 (the “Purchase Agreement”), pursuant to which the Company agreed to sell to the Investor, and the Investor agreed to purchase from the Company, shares of Series A Convertible Participating Perpetual Preferred Stock of the Company (such shares, the “Preferred Shares”) on the terms and subject to the conditions set forth in the Purchase Agreement;

WHEREAS, the Certificate of Designations (as set forth below) sets forth certain terms and rights with respect to the Preferred Shares and the Investor; and

WHEREAS, it is a condition to the closing of the transactions contemplated by the Purchase Agreement (the “Closing”) that the Company and the Investor enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained in this Agreement and the Certificate of Designations, and intending to be legally bound by this Agreement, the Company and the Investor agree as follows:

. Capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

“Adverse Disclosure” means the public disclosure of material non-public information that, in the good faith judgment of the Independent Directors (after consultation with Investor and legal counsel), (i) would be required to be made in any registration statement filed with the SEC by the Company so that such registration statement would not be materially misleading under applicable securities laws, (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement and (iii) the Company has a bona fide business purpose for not disclosing publicly.

“affiliate” of a specified person means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person.

“Automatic Shelf Registration Statement” means an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act.

“Board” means the Board of Directors of the Company.

“Business Day” means a day except a Saturday, a Sunday or other day on which banks in the City of New York are authorized or required by Law to be closed.

“Certificate of Designations” means the Certificate of Designations of the Series A Convertible Participating Perpetual Preferred Stock, par value \$0.0001 per share, of the Company.

“Closing” shall have the meaning set forth in the recitals of this Agreement.

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

“Company” shall have the meaning set forth in the preamble of this Agreement.

“Confidential Information” means any and all non-public information concerning the Company that has been or is furnished to the Investor (regardless of the manner in which it is furnished, including without limitation in written or electronic format or orally, gathered by visual inspection or

otherwise) by or on behalf of the Company, together with the portions of any documents created by the Investor or its Representatives that contain such information, other than information that (i) is or has become generally available to the public other than as a result of a direct or indirect disclosure by the Investor or its Representatives in violation of this Agreement, (ii) was within the Investor's or any of its Representatives' lawful possession prior to its being furnished to the Investor by or on behalf of the Company and was not subject, to the terms of any other non-disclosure or confidentiality agreement with the Company or its representatives, in their capacity as such, that is binding on the Investor and/or such Representatives of the Investor, as applicable, the terms of which would otherwise prohibit such disclosure, (iii) is received from a source other than the Investor or any of its representatives; provided, that in the case of each of (ii) and (iii) above, the source of such information was not known by the Investor to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information at the time the same was disclosed, or (iv) is independently developed by the Investor or any of its Representative without breach of this Agreement.

“control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, partnership interests or other ownership interests, as trustee or executor, by contract or credit arrangement or otherwise.

“Effectiveness Deadline” means with respect to any registration statement required to be filed to cover the resale by the Investor and/or Permitted Holders of Registrable Securities pursuant to 1, (i) the date such registration statement is filed, if the Company is a WKSI as of such date and such registration statement is an Automatic Shelf Registration Statement eligible to become immediately effective upon filing pursuant to Rule 462, or (ii) if the Company is not a WKSI, as of the date such registration statement is filed, the fifth (5th) Business Day following the date on which the Company is notified by the SEC that such registration statement will not be reviewed or is not subject to further review and comments and will be declared effective upon request by the Company.

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“Equity-Linked Securities” means any security or instrument convertible into, exercisable or exchangeable for capital stock of the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Filing Deadline” means with respect to any registration statement required to be filed to cover the resale by the Investor and/or Permitted Holders of Registrable Securities pursuant to 1, (i) ten (10) days following the written notice of demand therefor by the Investor, if the Company is a WKSI, as of the date of such demand, or (ii) if the Company is not a WKSI as of the date of such demand, (a) fifteen (15) Business Days following the written notice of demand therefor if the Company is then eligible to register for resale Registrable Securities on Form S-3 or (b) if the Company is not then eligible to use Form S-3, twenty (20) Business Days following the written notice of demand therefor, provided that, to the extent that the Company has not been provided the information regarding the Investor, any Permitted Holders and their respective Registrable Securities in accordance with 12 at least two (2) Business Days prior to the applicable Filing Deadline, then the such Filing Deadline shall be extended to the second (2nd) Business Day following the date on which such information is provided to the Company.

“Freely Tradable” means, with respect to any security, a security that (i) is eligible to be sold by the holder thereof without any volume or manner of sale restrictions under the Securities Act pursuant to Rule 144 thereunder, (ii) bears no legends restricting the transfer thereof and (iii) bears an unrestricted CUSIP number (to the extent such security is issued in global form).

“Indemnified Party” shall have the meaning set forth in 11.3.

“Indemnifying Party” shall have the meaning set forth in 11.3.

“Independence Criteria” shall have the meaning set forth in 10.2.

“Independent Directors” shall have the meaning set forth in 10.2.

“Inspectors” shall have the meaning set forth in Section 5(k).

“Investor” shall have the meaning set forth in the preamble of this Agreement.

“Investor Indemnitee” shall have the meaning set forth in 11.1.

“Investor's Counsel” shall have the meaning set forth in 3.2.

“Law” means any U.S. or non-U.S. law, including any statute, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or other order of a Governmental Authority of competent jurisdiction.

“Nominating and Corporate Governance Committee” means the Nominating and Corporate Governance Committee of the Board; provided that if, at the relevant time, such committee shall not exist or shall not have the responsibility and authority to recommend director

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candidates to the Board, “Nominating and Corporate Governance Committee” shall mean such other committee of the Board having such responsibility and authority.

“Non-Party Affiliates” shall have the meaning set forth in 17.11.

“Other Securities” shall have the meaning set forth in 2.1.

“Ownership Percentage” means, as of any date, the percentage equal to (i) the aggregate number of shares of Common Stock that the Investor or any Permitted Holders beneficially own (calculated, without duplication, assuming the full conversion (in each case, without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares and any shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of Designations) or issuable as accrued and unpaid PIK Dividends not previously added to the Liquidation Preference (as defined in the Certificate of Designations), in either case on or before such date) divided by (ii) the total number of shares of Common Stock then outstanding, (calculated assuming the full conversion (in each case, without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares, the shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of Designations) or issuable as accrued and unpaid PIK Dividends (as defined in the Certificate of Designations) not previously added to the Liquidation Preference, in either case on or before such date).

“Permitted Holders” means (i) the Investor’s affiliates and any partners or members of the Investor or such affiliates, and their respective partners, members and affiliates, in each case holding Registrable Securities as a result of one or more distributions by the Investor or any of such Persons, (ii) any successor entity of the Investor or any Person described in the foregoing clause (i), and (iii) any Person consented to in writing by the Company.

“Person” shall have the meaning set forth in the Purchase Agreement.

“Piggyback Notice” shall have the meaning set forth in 2.1.

“Piggyback Registration” shall have the meaning set forth in 2.1.

“Preemptive Rights Cap Amount” means, with respect to a Preemptive Rights Issuance, a number of securities which, if divided by the sum of (i) such number of securities plus (ii) the number of securities issued in such Preemptive Rights Issuance, would represent a percentage that is equal to the Ownership Percentage (as of immediately prior to the Preemptive Rights Issuance).

“prospectus” means the prospectus included in a registration statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a registration statement, and all other amendments and supplements to the prospectus, including post-effective amendments.

“Purchase Agreement” shall have the meaning set forth in the recitals of this Agreement.

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“Register,” “registered,” and “registration” shall refer to a registration effected by preparing and (i) filing a registration statement with the Securities and Exchange Commission the SEC in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement by the SEC or (ii) filing a prospectus and/or prospectus supplement in respect of an appropriate effective Shelf Registration Statement.

“Registrable Securities” means (i) shares of Common Stock held by the Investor or any Permitted Holder, (ii) shares of Common Stock issuable (directly or indirectly) upon conversion and/or exercise of any capital stock of the Company, including any Preferred Shares, held by the Investor or any Permitted Holder and (iii) any securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend, stock split, recapitalization or other distribution with respect to, or in exchange for, or in replacement of, the Common Stock referenced in clauses (i) or (ii) above or this clause (iii); provided that the term “Registrable Securities” shall exclude in all cases any securities (x) that are sold pursuant to an effective registration statement under the Securities Act or publicly resold in compliance with Rule 144, (y) that are immediately Freely Tradable pursuant to Rule 144, or (z) that shall have ceased to be outstanding. Solely for purposes of determining at any time whether any Registrable Securities are then held, outstanding or transferred, the Preferred Shares and any shares of Series A Preferred issued as PIK Dividends shall be treated, on an as-converted basis (without regard to any limitation on conversion in the Certificate of Designations), as Registrable Securities.

“Registration Expenses” shall mean, with respect to any registration and without limitation, (i) all SEC, stock exchange, FINRA and other registration and filing fees, (ii) all fees and expenses of compliance with securities or blue sky laws (including reasonable fees, charges and disbursements of counsel to any underwriter incurred in connection with blue sky qualifications of Registrable Securities as may be set forth in any underwriting agreement), (iii) all word processing, duplicating and printing expenses, messenger and delivery expenses, (iv) fees and disbursements of counsel for the Company and all independent public accountants, (v) fees paid to other Persons retained by the Company, (vi) the Company’s internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (vii) the expenses of any annual audit or quarterly review, (viii) the expenses (including premiums) of any liability or other insurance and (ix) the expenses and fees for listing the securities to be registered on each securities exchange on which the same class of securities issued by the Company are then listed; provided that Registration Expenses shall include Selling Expenses.

“registration statement” means any registration statement that is required to register the resale of Registrable Securities under this Agreement, including the related prospectus and any pre- and post-effective amendments and supplements to each such registration statement or prospectus.

“Representatives” means (i) the Investor’s members, (ii) the Investor’s and its members’ respective affiliates, and (iii) the Investor’s, its members’ and such affiliates’ respective employees, officers, directors, advisors and consultants; provided, that no portfolio company of Siris Capital Group, LLC will have any obligation as a Representative pursuant to this

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Agreement unless and until the Investor furnishes Confidential Information to such portfolio company (it being acknowledged that such furnishing, if at all, shall be pursuant to and in accordance with the confidentiality provisions set forth in this Agreement).

“Sale Notice” shall have the meaning set forth in 5.1.

“Scheduled Black-out Period” means the period beginning fifteen (15) calendar days prior to the end of each fiscal quarter and ending upon the completion of the first full trading day after the Company publicly releases its earnings for such fiscal quarter, or as such period is otherwise defined in the Company’s written insider trading policy, applicable generally to officers and directors of the Company.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Securities” means collectively, Registrable Securities and Other Securities.

“Selling Expenses” shall mean all underwriting discounts, selling commissions and stock transfer taxes, if any, applicable to the sale of Registrable Securities and all related fees and expenses of the Investor (other than such fees and expenses included in Registration Expenses).

“Series A Preferred” means the Series A Convertible Participating Perpetual Preferred Stock of the Company, par value \$0.0001 per share.

“Series A Preferred Directors” shall have the meaning set forth in the Certificate of Designations.

“Shelf Registration” shall have the meaning set forth in 5.1.

“Shelf Suspension” shall have the meaning set forth in 5.1.

“Shelf Suspension Notice” shall have the meaning set forth in 5.1.

“Standstill Percentage” means, as of any date, the percentage equal to (i) the aggregate number of shares of Common Stock that the Investor or its affiliates beneficially own (calculated assuming the full conversion (in each case without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares, the shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of Designations) or issuable as accrued and unpaid PIK Dividends not previously added to the Liquidation Preference (as defined in the Certificate of Designations), in either case on or before such date) *divided by* (ii) the total number of shares of Common Stock outstanding determined on a fully diluted, as-if-exercised basis (calculated assuming the exercise and settlement of all compensation awards in respect of capital stock of the Company outstanding as of immediately prior to such date, whether or not exercised, settled, eligible for settlement or vested, and the full conversion (in each case, without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares and any shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of

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Designations) or issuable as accrued and unpaid PIK Dividends not previously added to the Liquidation Preference (as defined in the Certificate of Designations), in either case on or before such date).

“Subsidiary” shall mean any company, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization or other entity at least 50% of the voting capital stock of which is owned, directly or indirectly, by the Company.

“Suspension Period” shall have the meaning set forth in 1.4.

“Underwriter Cutback” shall have the meaning set forth in 2.2.

“WKSI” shall mean a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act.

## **1. Demand Registration**

1.1 Subject to the terms and conditions of this Agreement, including 1.3, if at any time following May 1, 2018, the Company receives a written request from the Investor that the Company register under the Securities Act Registrable Securities representing at least 10% of the Registrable Securities held by the Investor or the Permitted Holders, then the Company shall file, as promptly as reasonably practicable but no later than the applicable Filing Deadline, a registration statement under the Securities Act covering all Registrable Securities that the Investor requests to be registered. The registration statement shall be on Form S-3 (except if the Company is not then eligible to register for resale Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form for such purpose) and, if the Company is a WKSI as of the Filing Deadline, shall be an Automatic Shelf Registration Statement. The Company shall use its commercially reasonable efforts to cause the registration statement to be declared effective or otherwise to become effective under the Securities Act as soon as reasonably practicable but, in any event, no later than the Effectiveness Deadline, and shall use its commercially reasonable efforts to keep the registration statement continuously effective under the Securities Act until the earlier of (1) the date on which the Investor notifies the Company in writing that the Registrable Securities included in such registration statement have been sold or the offering therefor has been terminated or (2) (x) thirty (30) Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is a WKSI and filed an Automatic Shelf Registration Statement in satisfaction of such demand, (y) forty (40) Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is not a WKSI and registered for resale the Registrable Securities on Form S-3 in satisfaction of such demand or (z) fifty (50) Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is neither a WKSI nor then eligible to use Form S-3 and registered for resale the Registrable Securities on Form S-1 or other applicable form in satisfaction of such demand; provided that each period specified in clause (2) of this sentence shall be extended automatically by one (1) Business Day for each Business Day that the use of such registration statement or prospectus is suspended by the Company pursuant to any Suspension Period, pursuant to (d) below or pursuant to Section 5(j).

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1.2 If the Investor intends to distribute the Registrable Securities covered by such Investor’s request by means of an underwriting, (i) the Investor shall so advise the Company as a part of its request made pursuant to 1.1 and (ii) the Investor shall have the right to appoint the book-running, managing and other underwriter(s) after consultation with the Company.

1.3 The Company shall not be required to effect a registration pursuant to this 1: (i) after the Company has effected three registrations pursuant to this 1, and each of such registrations has been declared or ordered effective and kept effective by the Company as required by 4.1; or (ii) more than twice during any single calendar year; provided, however, that a request for registration will not count for the purposes of this limitation if (x) the Investor determines in good faith to withdraw (prior to the effective date of the registration statement relating to such request) the proposed registration or (y) the registration statement relating to such request is not declared effective within the earlier of Effectiveness Deadline.

1.4 Notwithstanding anything to the contrary in this Agreement, (1) upon notice to the Investor, the Company may delay the Filing Deadline and/or the Effectiveness Deadline with respect to, or suspend the effectiveness or availability of, any registration statement for up to ninety (90) days in the aggregate in any twelve-month period (a "Suspension Period") if the Company would have to make an Adverse Disclosure in connection with the registration statement; provided that (i) any suspension of a registration statement pursuant to 5.2 or 4.10 shall be treated as a Suspension Period for purposes of calculating the maximum number of days of any Suspension Period under this 1.4 and (ii) no Suspension Period may overlap with any redemption pursuant the Certificate of Designations (including Section 5 thereof) through the date that is thirty (30) Business Days following any such redemption; and (2) upon notice to the Investor, the Company may delay the Filing Deadline and/or the Effectiveness Deadline with respect to any registration statement for a period not to exceed thirty (30) days prior to the Company's good faith estimate of the launch date of, and ninety (90) days after the closing date of, a Company initiated registered offering of equity securities (including equity securities convertible into or exchangeable for Common Stock); provided that (i) the Company is actively employing in good faith all commercially reasonable efforts to launch such registered offering throughout such period, (ii) the Investor and Permitted Holders are afforded the opportunity to include Registrable Securities in such registered offering in accordance with 2 and (iii) the right to delay or suspend the effectiveness or availability of such registration statement pursuant to this clause (2) shall not be exercised by the Company more than two (2) times in any twelve-month period and not more than ninety (90) days in the aggregate in any twelve-month period, other than solely due to the Financial Restatement (as defined in the Purchase Agreement) for so long as the Company is using its best efforts to issue the Restated Financial Statements (as defined in the Purchase Agreement). If the Company shall delay any Filing Deadline pursuant to this clause (d) for more than ten (10) Business Days, the Investor may withdraw the demand therefor at any time after such ten (10) Business Days so long as such delay is then continuing by providing written notice to the Company to such effect, and any demand so withdrawn shall not count as a demand for registration for any purpose under this 1, including 1.3.

1.5 Notwithstanding the foregoing, if the managing underwriter(s) of an underwritten offering in connection with any registration pursuant to this 1 advises the Company and the Investor in writing that, in its good faith judgment, the number of Registrable Securities

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requested to be included in such offering exceeds the number of Registrable Securities which can be sold in such offering at a price acceptable to the Investor, then the number of Registrable Securities so requested to be included in such offering shall be reduced to that number of shares which, in the good faith judgment of the managing underwriter, can be sold in such offering at such price.

## 2. Piggyback Registration.

2.1 Subject to the terms and conditions of this Agreement, if at any time the Company files a registration statement under the Securities Act with respect to an offering of Common Stock or other equity securities of the Company (such Common Stock and other equity securities collectively, "Other Securities"), whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms, (ii) filed solely in connection with any employee benefit or dividend reinvestment plan or (iii) pursuant to a demand registration in accordance with 1), then the Company shall use commercially reasonable efforts to give written notice of such filing to the Investor at least ten (10) Business Days before the anticipated filing date (the "Piggyback Notice"). The Piggyback Notice and the contents thereof shall be kept confidential by the Investor and its affiliates and representatives, and the Investor shall be responsible for breaches of confidentiality by its affiliates and representatives. The Piggyback Notice shall offer the Investor and the Permitted Holders the opportunity to include in such registration statement, subject to the terms and conditions of this Agreement, the number of Registrable Securities as the Investor may reasonably request (a "Piggyback Registration"). Subject to the terms and conditions of this Agreement, the Company shall use its commercially reasonable efforts to include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received from the Investor written requests for inclusion therein within ten (10) Business Days following receipt of any Piggyback Notice by the Investor, which request shall specify the maximum number of Registrable Securities intended to be disposed of by the Investor and any Permitted Holder and the intended method of distribution. For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, the Company may not commence or permit the commencement of any sale of Other Securities in a public offering to which this 2 applies unless the Investor shall have received the Piggyback Notice in respect to such public offering not less than ten (10) Business Days prior to the commencement of such sale of Other Securities. The Investor and any Permitted Holder shall be permitted to withdraw all or part of the Registrable Securities from a Piggyback Registration at any time at least two (2) Business Days prior to the effective date of the registration statement relating to such Piggyback Registration. No Piggyback Registration shall count towards the number of demand registrations that the Investor is entitled to make in any period or in total pursuant to 1.

2.2 If any Other Securities are to be sold in an underwritten offering, (1) the Company or other Persons designated by the Company shall have the right to appoint the book-running, managing and other underwriter(s) for such offering in their discretion and (2) the Investor and any Permitted Holder shall be permitted to include all Registrable Securities requested by the Investor to be included in such registration in such underwritten offering on the same terms and conditions as such Other Securities proposed by the Company or any third party to be included in such offering; provided, however, that if such offering involves an underwritten offering and the managing underwriter(s) of such underwritten offering advise the Company in

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writing that it is their good faith opinion that the total amount of Registrable Securities requested to be so included, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering (an "Underwriter Cutback"), exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the good faith opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows: (x) to the extent such public offering is the result of a registration initiated by the Company, (i) first, all Other Securities being sold by the Company; (ii) second, all Registrable Securities requested to be included in such registration by the Investor and (iii) third all Other Securities of any holders thereof (other than the Company and the Investor) requesting inclusion in such registration, or (y) to the extent such public offering is the result of a registration initiated by any



Persons (other than the Company or the Investor) exercising a contractual right to demand registration, (i) first, *pro rata* among all Other Securities owned by such Persons exercising the contractual right and all Registrable Securities requested by the Investor to be included in such registration, (ii) second, all Other Securities of any holders thereof (other than the Investor, the Company and the Persons exercising the contractual right) requesting inclusion in such registration, *pro rata*, based on the aggregate number of Other Securities beneficially owned by each such holder; and (iii) third, all Other Securities being sold by the Company.

### 3. Expenses of Registration.

3.1 Except as specifically provided for in this Agreement, all Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registration hereunder, shall be borne by the Investor in proportion to the number of Registrable Securities for which registration was requested. The Company shall not, however, be required to reimburse the Investor or Permitted Holders, as applicable, for any Registration Expenses incurred by it or them for any registration proceeding begun pursuant to Section 2, the request of which has been subsequently withdrawn by the Investor unless (a) the withdrawal is based upon materially adverse circumstances or conditions or material adverse information concerning the Company or its Subsidiaries that (i) the Company had not publicly disclosed in a report filed with or furnished to the SEC under the Exchange Act at least three (3) Business Days prior to the request or (ii) the Company had not disclosed to any Series A Director in person or by telephone at the last meeting of the Board or any committee of the Board, in each case, at which a Series A Director is present or at any time since the date of such meeting of the Board, (b) the withdrawal is made in accordance with the last sentence of Section 2(d), or (c) the Investor agrees to forfeit its right to one requested registration pursuant to Section 2.

3.2 In connection with each registration pursuant to 1, in addition to the Registration Expenses payable pursuant to 3.1, the Company will reimburse the Investor for the reasonable fees and disbursements of one United States counsel, who will be chosen by the Investor in its sole discretion ("Investor's Counsel").

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4. Obligations of the Company. Whenever required to effect the registration of any Registrable Securities pursuant to 1 or 2 of this Agreement, the Company shall, as promptly as reasonably practicable:

4.1 With respect to a Demand Registration, prepare and as soon as practicable file with the SEC a registration statement (including all required exhibits to such registration statement) with respect to such Registrable Securities and use reasonable best efforts to cause such registration statement to become effective, or prepare and file with the SEC a prospectus supplement with respect to such Registrable Securities pursuant to an effective registration statement and keep such registration statement effective or such prospectus supplement current, in the case of a registration pursuant to 1, in accordance with 1.

4.2 Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period required Section 2 (including any extension provided for therein).

4.3 To the extent reasonably practicable, not less than five (5) Business Days prior to the filing of a registration statement or any related prospectus or any amendment or supplement thereto, the Company shall furnish to the Investor and Investor's Counsel copies of all such documents proposed to be filed and give reasonable consideration to the inclusion in such documents of any comments reasonably and timely made by the Investor or its legal counsel; provided that the Company shall include in such documents any such comments that are necessary to correct any material misstatement or omission regarding the Investor.

4.4 Furnish to the Investor and Investor's Counsel such number of copies of the applicable registration statement and each such amendment and supplement thereto (including upon request in each case all exhibits but not documents incorporated by reference) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as the Investor may reasonably request in order to facilitate the disposition of Registrable Securities by the Investor and Permitted Holders. The Company hereby consents to the use of such prospectus and each amendment or supplement thereto by the Investor and any participating Permitted Holder in accordance with applicable Law in connection with the offering and sale of the Registrable Securities covered by such prospectus and any amendment or supplement thereto.

4.5 Prior to any offering of Common Stock pursuant to the registration statement, the Company shall use commercially reasonable efforts to (i) arrange for the qualification of the Common Stock for offer and sale under the securities or "blue sky" laws of such states of the United States as the Investor shall reasonably request and shall maintain such qualification in effect so long as required to enable the Investor to consummate the disposition in such jurisdictions of the Common Stock, and (ii) reasonably cooperate with the Investor in connection with any filings required to be made with FINRA; provided, that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not then so qualified or to take any action that would subject it to taxation or service of process in suits,

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other than those arising out of any offering pursuant to the registration statement, in any jurisdiction where it is not then so subject.

4.6 Enter customary agreements and take such other actions as are reasonably required in order to facilitate the disposition of such Registrable Securities, including, if the method of distribution of Registrable Securities is by means of an underwritten offering, using commercially reasonable efforts to, (i) participate in and make documents available for the reasonable and customary due diligence review of underwriters during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company; provided that (A) any party receiving confidential materials shall execute a confidentiality agreement on customary terms if reasonably requested by the Company and (B) the Company may in its reasonable discretion restrict access to competitively sensitive or legally privileged documents or information, (ii) cause the chief executive officer and chief financial officer to be available at reasonable dates and times to participate in "road show" presentations and/or investor conference calls to market the Registrable Securities during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company or the conduct of the Business of the Company; provided that the aggregate number of days of "road show" presentations in connection with an underwritten offering of Registrable

Securities for each registration pursuant to a demand made under 1 shall not exceed five (5) Business Days and (iii) negotiate and execute an underwriting agreement in customary form with the managing underwriter(s) of such offering and such other documents reasonably required under the terms of such underwriting arrangements, including using commercially reasonable efforts to procure a customary legal opinion and auditor "comfort" letters. The Investor shall also enter into and perform its obligations under any such underwriting agreement.

4.7 Give notice to the Investor as promptly as reasonably practicable:

- (a) when any registration statement filed pursuant to 1 or in which Registrable Securities are included pursuant to 2 or any amendment to such registration statement has been filed with the SEC and when such registration statement or any post-effective amendment to such registration statement has become effective;
- (b) of any request by the SEC for amendments or supplements to any registration statement (or any information incorporated by reference in, or exhibits to, such registration statement) filed pursuant to 1 or in which Registrable Securities are included pursuant to 2 or the prospectus (including information incorporated by reference in such prospectus) included in such registration statement or for additional information;
- (c) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement filed pursuant to 1 or in which Registrable Securities are included pursuant to 2 or the initiation of any proceedings for that purpose;
- (d) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

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(e) of the occurrence of any event that requires the Company to make changes to any effective registration statement or the prospectus so that, as of such date, they (A) do not contain any untrue statement of a material fact and (B) do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in the light of the circumstances under which they were made) not misleading).

4.8 Use its commercially reasonable efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in 4.7(c) at the earliest practicable time.

4.9 Upon request, furnish to the Investor, without charge, at least one copy of the registration statement and any post-effective amendment thereto, and, if the Investor so requests in writing, all exhibits thereto

4.10 Upon the occurrence of any event contemplated by subsections (g)(iii) through (v) above, the Company shall promptly prepare and file a post-effective amendment to the registration statement or an amendment or supplement to the related prospectus or file any other required document to remedy the basis for any suspension of the registration statement and so that, as thereafter delivered to any sales or placement agents or underwriters acting on the Investor's behalf, the prospectus will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If the Company notifies the Investor in accordance with subsections (g)(iii) through (v) above to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Investor shall suspend the use of such prospectus and use its commercially reasonable efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in the Investor's or its Representatives' possession; provided that such suspension shall be treated as a Suspension Period for purposes of calculating the maximum number of days of any Suspension Period under 1.4.

4.11 Use all commercially reasonable efforts to furnish or make available (and cause the Company's officers, directors, employees and independent public accountants to furnish or make available) upon reasonable notice and during normal business hours, for inspection by the Investor, Investor's Counsel, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter (collectively the "Inspectors"), all pertinent financial and other records, pertinent documents and properties of the Company and its Subsidiaries, as shall be reasonably necessary to enable them to exercise their due diligence responsibility pursuant to the Securities Act, the Exchange Act and the rules and regulations thereunder, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such Inspector in connection with such registration statement. Records that the Company determines, in good faith, to be confidential and which it notifies the Inspectors are confidential shall not be disclosed by the Inspectors (and the Inspectors shall confirm their agreement in writing in advance to the Company if the Company shall so request) unless (A) the disclosure of such Records is necessary, in the Inspector's judgment, to avoid or correct a misstatement or omission in the registration statement, (B) the release of such records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction after compliance with the last

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sentence of this clause (k) or (C) the information in such records was known to the Inspectors on a nonconfidential basis prior to its disclosure by the Company or has been made generally available to the public. The Investor agrees that it shall, upon learning that disclosure of such records is sought in a court of competent jurisdiction, give notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of the records deemed confidential.

4.12 Keep Investor and Investor's Counsel advised in writing as to the initiation and, as appropriate, of the progress of any registration under 1 or 2 and provide Investor's Counsel with all correspondence with the SEC in connection with any such registration statement.

4.13 No later than the effective date of any registration statement, use commercially reasonable efforts to procure the cooperation of the Company's transfer agent for settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Investor or the managing underwriter(s). In connection therewith, if reasonably required by the Company's transfer agent, the Company shall promptly after the effectiveness of the registration statement cause an opinion of counsel as to the effectiveness of the registration statement to be delivered to and maintained with its transfer agent, together with any other authorizations,

certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the holder of such shares of Registrable Securities under the registration statement.

4.14 Use its reasonable best efforts to take or cause to be taken all other actions, and do and cause to be done all other things, necessary or reasonably advisable in the opinion of the Investor to effect the registration of the Registrable Securities contemplated hereby.

## 5. Suspension of Sales.

5.1 Prior to the sale or distribution of any Registrable Securities pursuant to a registration statement that is for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the SEC), the Investor shall give at least two (2) Business Days prior written notice thereof to the Company (a "Sale Notice") and the Investor (and any participating Permitted Holders) shall not sell or distribute any Registrable Securities unless the Investor has timely provided such Sale Notice and, subject to the Shelf Suspension period described below, until the expiration of such 2-Business Day period. If in response to a Sale Notice, the Company shall provide to the Investor a certificate signed by the Chief Executive Officer of the Company stating that the Company would have to make an Adverse Disclosure (as determined pursuant to the definition thereof) (the "Shelf Restriction"), then the Company may, by written notice thereof to the Investor (a "Shelf Suspension Notice"), suspend use of the registration statement by the Investor (and any participating Permitted Holders) until the expiration of the Shelf Restriction (a "Shelf Suspension"); provided that the period of any such Shelf Suspension may not exceed the Suspension Period set forth in 1.4. In the case of a Shelf Suspension, the Investor (and any participating Permitted Holder) agrees to suspend use of the applicable prospectus and any issuer

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free writing prospectuses in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the Shelf Suspension Notice referred to above. The Company shall immediately notify the Investor upon the termination of any Shelf Suspension, and either confirm that the registration statement can be used or supplement or make amendments to the registration statement to the extent required by the registration form used by the Company for the Shelf Registration or by the Securities Act or the rules or regulations promulgated thereunder and promptly notify the Investor thereof. The Company agrees to not deliver a Shelf Suspension Notice to the Investor or otherwise inform the Investor of a Shelf Restriction unless and until the Investor delivers a Sale Notice to the Company.

5.2 Upon receipt of written notice from the Company pursuant to 4.7(e), the Investor (and any participating Permitted Holder) shall immediately discontinue disposition of Registrable Securities until the Investor (i) has received copies of a supplemented or amended prospectus or prospectus supplement pursuant to 4.10 or (ii) is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Investor shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Investor's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice.

6. **Books and Records; Access.** For so long as the Investor's Ownership Percentage is 5% or more, the Company shall permit the Investor and its designated representatives, at reasonable times and upon reasonable prior notice to the Company, to examine the records and books of account of the Company and its Subsidiaries and to discuss the affairs, finances and condition of the Company or any of its Subsidiaries with the officers of the Company or any such Subsidiary and the Company's independent accountants. In addition, for so long as the Investor's Ownership Percentage is 5% or more, upon written request of the Investor, the Company shall provide to the Investor duplicate copies of such financial and other information concerning the Company and its Subsidiaries as may from time to time be reasonably requested by such Investor.

## 7. Restrictions on Transfer.

7.1 Subject to 7.2, the Investor shall not, directly or indirectly, sell, transfer or otherwise dispose of any Preferred Shares or shares of Series A Preferred Stock issued as PIK Dividends without the Company's prior written consent (such consent to be provided or withheld by a majority of directors voting who are independent directors and disinterested in the matter).

7.2 Notwithstanding the foregoing 7.1, the following transfers ("Permitted Transfers") shall be permitted (without prior consent):

- (a) to a Permitted Holder who agrees to be bound by the terms of this Agreement;
- (b) in a Reorganization Event (as defined in the Certificate of Designations);

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- (c) in connection with a redemption pursuant to the terms of the Certificate of Designations (including pursuant to Section 5 thereof);
- (d) in connection with a conversion to Common Stock pursuant to the terms of the Certificate of Designations; or
- (e) in any Pro Rata Transaction.

7.3 For purpose of this Agreement, a "Pro Rata Transaction" shall mean any transaction (excluding any Reorganization Event (as defined in the Certificate of Designations)) in which all stockholders of the Company (x) are offered terms substantially similar to those given to the Investor (as described in clause (y) below), or otherwise are offered the opportunity to, or will, participate in such transaction on a pro rata basis, and (y) are entitled to receive consideration of equal market value (on a per share or as-converted basis), with no value paid to any holder of Preferred Shares in respect of any liquidation preference, option value, dividend (except for any accrued but unpaid dividends in accordance with the Certificate of Designations through the date of such transaction). The Company shall cooperate with, and not frustrate, any transfers by the Investor or Permitted Holders that are not prohibited by this Agreement.

## 8. Standstill Restrictions; Voting; Dividends.

8.1 Standstill. For as long as the holders of the Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, without the prior approval by a majority of directors voting who are not Series A Preferred Directors, neither the Investor nor its affiliates shall directly or indirectly purchase or acquire any debt or equity securities of the Company, any Equity-Linked Securities, or any other right to acquire such securities, in each case that would result in the Investor's Standstill Percentage being in excess of 30%; provided, however, the foregoing restrictions shall not prohibit the purchase of the Preferred Shares pursuant to the Purchase Agreement or the receipt of shares of Series A Preferred issued as PIK Dividends pursuant to the Certificate of Designations, shares of Common Stock received upon conversion of Preferred Shares or shares of Series A Preferred issued as PIK Dividends or receipt of any shares of Series A Preferred, Common Stock or other securities of the Company otherwise paid as dividends or as an increase of the Liquidation Preference (as defined in the Certificate of Designations) or distributions thereon.

8.2 Sales or Other Process. Notwithstanding Section 9(a), if the Board decides to engage in a process that could reasonably be expected to give rise to a merger, tender offer, substantial share investment, change of control transaction or other extraordinary transaction related to the Company, the Company shall invite the Investor to participate in such process on the terms and conditions generally made available to the other participants in such process; provided, however, that in the event the Investor participates in such process, each Series A Preferred Director shall recuse himself or herself from voting on, or otherwise receiving any confidential information in his or her capacity as a Series A Preferred Director regarding, matters in connection with such process; provided, further, that, following the termination of the Investor's participation in any process, such director's right to vote on, and receive confidential information about, the process shall be reinstated.

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8.3 Voting. For as long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, in the event that the Board determines to effect a reorganization, merger, consolidation or similar transaction involving the Company and requiring stockholder approval, the Investor will cause all of its shares of Company Capital Stock that are entitled to vote to be voted in favor of any such transaction, if and only if (a) the Investor will receive an amount in cash equal to the sum of (i) \$185,000,000, (ii) in respect of each share of Series A Preferred, the dollar value of the Accrued Dividends (as defined in the Certificate of Designations), (iii) the dollar value of all outstanding shares of Series A Preferred, if any, issued as PIK Dividends *multiplied by* \$1,000, (iv) in respect of each share of Series A Preferred, the dollar value of any amount of the Net Preferred Dividend (as defined in the Certificate of Designations) added to the Liquidation Preference (as defined in the Certificate of Designations) and (v) if applicable, in respect of each share of Series A Preferred, the aggregate amount of all PIK Dividends that would have been paid in respect of a Preferred Share or share of Series A Preferred issued as PIK Dividends in each remaining Dividend Period (as defined in the Certificate of Designations) from the date of the Board's determination through the thirty-month (30) anniversary of the Original Issue Date *multiplied by* \$1,000, (b) any shares of Common Stock or shares of Series A Preferred then owned by the Investor are not treated in any manner adverse to any other shares of the Company (including, with respect to the shares of Series A Preferred, on an as-converted basis (without regard to any limitation on conversion in the Certificate of Designations) and (c) the terms of such transaction are, taken as a whole, more favorable to the Company's stockholders (as determined by the Board) than the terms of any alternative transaction proposed by the Investor or its affiliates.

8.4 The parties acknowledge that the Investor has provided the Company with a schedule accurately presenting the calculation of the Preferred Dividends (as defined in the Certificate of Designations) pursuant to the Certificate of Designations in certain circumstances.

## 9. Preemptive Rights.

9.1 The Investor will have the preemptive rights set forth in this 9 with respect to any issuance of any Common Stock or Equity-Linked Securities that are issued after the date hereof (any such issuance, other than those described in clauses (i) through (iii) below, a "Preemptive Rights Issuance"), except for (i) issuances solely to officers, employees, directors and consultants pursuant to and in accordance with equity incentive plans of the Company that were publicly filed with the SEC prior to the date hereof (provided that any such issuances are made in accordance with the terms, conditions and limitations of such plans as they existed as of the date of hereof and without effect to any amendments or other modifications thereof after the date hereof unless approved in writing by the Investor) or pursuant to equity incentive plans of the Company that are approved by the Board and publicly filed with the SEC after the date hereof, (ii) issuances of shares of Common Stock as consideration in any merger or acquisition approved pursuant to 8.3, or (iii) issuances of shares of Common Stock upon conversion of any of the Company's 0.75% Convertible Senior Notes, due 2019 (provided that any such issuances are made in accordance with the terms, conditions and limitations of the indenture governing such notes as it existed as of the date hereof). The preemptive rights in this 9 shall terminate at such time as the holders of Series A Preferred no longer have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations.

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9.2 If the Company at any time, or from time to time, effects a Preemptive Rights Issuance, the Company shall give prompt written notice to the Investor (but in no event later than ten (10) days prior to such issuance), which notice shall set forth the number and type of the securities to be issued, the issuance date, the offerees or transferees, the price per security, and all of the other terms and conditions of such issuance, which shall be deemed updated by delivery of the final documentation for such issuance to the Investor. The Investor may, by written notice to the Company (a "Preemptive Rights Notice") delivered at any time thereafter but no later than twenty (20) days after the consummation of such Preemptive Rights Issuance, elect to purchase (or designate an affiliate to purchase) a number of securities specified in such Preemptive Rights Notice (which number may be any number up to but not exceeding the Preemptive Rights Cap Amount applicable to such Preemptive Rights Issuance), on the same terms and conditions as such Preemptive Rights Issuance (it being understood and agreed that (i) the price per security that the Investors shall pay shall be the same as the price per security set forth in the Preemptive Rights Notice, and (ii) the Investors shall not be required to comply with any terms, conditions, obligations or restrictions (including, without limitation, any non-compete, standstill or other limitations but excluding any remaining period of a transfer or lock-up restriction applicable at such time to other purchasers in such Preemptive Rights Issuance) not necessary for the effectuation of the sale or issuance of such securities). If the Investor exercises its preemptive rights hereunder with respect to such Preemptive Rights Issuance, the Company shall (or shall cause such subsidiary to) issue to the Investor (or its designated affiliate) the number of securities specified in such Preemptive Rights Notice promptly thereafter (and provided that, if the Investor shall have so notified the Company at least 3 Business Days prior to the issuance date set forth in the Company's notice, at the Investor's election such purchase and sale shall occur on the same date as, and immediately following, the Preemptive Right Issuance). For the avoidance of doubt, in the event that the issuance of Common Stock or Equity-Linked Securities in a Preemptive Rights Issuance involves the purchase of a package of securities that includes Common Stock or Equity-Linked Securities and other securities in the same Preemptive Rights Issuance, the Investor shall have the right to acquire its pro rata portion of such

other securities, together with its pro rata portion of such Common Stock or Equity-Linked Securities, in the same manner described above (as to amount, price and other terms), or solely acquire the Common Stock or Equity-Linked Securities.

9.3 The election by the Investor not to exercise its preemptive rights hereunder in any one instance shall not affect its right as to any future Preemptive Rights Issuances.

9.4 Notwithstanding anything to the contrary in this Agreement, in the event that the Investor exercises its preemptive rights pursuant to this Section 10 and the purchase or issuance of such securities would require the Company to obtain approval of its stockholders pursuant to NASDAQ listing rule 5635 (or any similar successor rule of NASDAQ or other United States national securities exchange that the Common Stock is listed upon, if any), the Company and the Investor will use their respective commercially reasonable efforts to negotiate in good faith the terms of any such transaction, including without limitation the terms of any securities of the Company issued pursuant to such transaction to the Investor, such that the issuance to the Investor would not require such stockholder approval while providing the Investor with substantially similar benefits and rights of such securities issued in the Preemptive

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Rights Issuance (including with respect to maintaining the Preferred Percentage (as defined in the Certificate of Designations)).

## 10. **Governance.**

10.1 Effective as of the Closing, the Board shall consist of ten (10) members, as set forth on Exhibit A hereto.

10.2 From and after the Closing, so long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, the Board shall consist of ten (10) members, composed of (i) two (2) Series A Preferred Directors; (ii) four (4) directors who meet the independence criteria set forth in the listing standards of the NASDAQ Global Select Market to the extent applicable to the Company (or other United States national securities exchange that the Common Stock is listed upon, if any) (the “Independence Criteria”), and selected pursuant to 10.4 (each such director, an “Independent Director”); and (iii) four (4) other directors, two of whom shall satisfy the Independence Criteria (and, as of the Closing, one (1) of whom shall be the individual then serving as chief executive officer of the Company (as selected pursuant to Section 8.14 of the Purchase Agreement), one (1) of whom shall be the current chairman of the Board and the remaining two (2) shall be two of the directors on the Board as of the date hereof who satisfy the Independence Criteria); provided that the number of Series A Preferred Directors and Independent Directors may be adjusted pursuant to 10.5.

10.3 The Company shall, at any annual or special meeting of stockholders of the Company at which directors are to be elected, so long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, include the Series A Preferred Directors (or such other persons as may be selected in writing by the Investor) and the Independent Directors in the Company’s slate of nominees as for each relevant annual meeting of the Company’s stockholders (subject to each designee’s satisfaction of all applicable requirements regarding service as a director of the Company under applicable Law, regulation or stock exchange rules regarding service as a director; provided, however, that in no event shall any such designee’s relationship with the Investor (or any other actual or potential lack of independence resulting therefrom) be considered to disqualify such designee from being a member of the Board pursuant to this Section 11(c)) and shall recommend that the holders of the Series A Preferred Stock and/or Common Stock, as applicable, vote in favor of such Series A Preferred Directors and such Independent Directors and shall support such Series A Preferred Directors and Independent Directors in a manner generally no less rigorous and favorable than the manner in which the Company supports its other nominees.

10.4 Prior to the Closing, the individuals who shall serve in the capacity of Independent Directors as of the Closing shall be mutually selected by the Nominating and Corporate Governance Committee and the Investor. Such individuals shall be (i) selected in good faith (taking into account the requisite skills and experience required for effective service on the board of directors of a company such as the Company and the compensation required to attract and retain a director with such requisite skills) and (ii) meet the Independence Criteria, and the Company and the Investor shall mutually agree upon the class of directors (as provided

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in Article VI of the Certificate of Incorporation of the Company) in which each such selected Independent Director shall serve as of the Closing. The members of the Nominating and Corporate Governance Committee as of the Closing shall be as set forth on Exhibit A hereto. Following the Closing, so long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, the Investor shall have the right to designate two members of the Nominating and Corporate Governance Committee from among the Independent Directors and the Series A Preferred Directors, provided that each such designee shall meet any applicable requirements for service on such committee under the listing standards of the principal stock exchange on which the Common Stock is then listed, if any.

10.5 (i) If at any time after the Closing, the Investor no longer meets the Ownership Threshold (as defined in the Certificate of Designations) but maintains the right to nominate one Series A Preferred Director pursuant to Section (8)(b) of the Certificate of Designations, the Investor shall cause one of the Series A Preferred Designees then sitting on the Board to offer to resign from the Board with immediate effect, and (ii) the vacancy caused by such resignation, if accepted by the Board, shall be filled by an Independent Director, in accordance with 10.4.

10.6 If a Series A Preferred Director resigns, dies, is not elected or is disqualified or removed from the Board, the Investor may nominate a replacement Series A Preferred Director, and such replacement Series A Preferred Director shall promptly be appointed to the Board, as provided in the bylaws of the Company.

10.7 The Series A Preferred Directors and the Independent Directors shall be entitled to reimbursement from the Company for all out-of-pocket expenses for travel and other arrangements reasonably incurred and paid by such directors in connection with their participation in meetings of the Board or committees thereof, subject to the provisions of the Company’s then current non-employee director compensation program.

10.8 From and after the Closing, the Company shall use reasonable best efforts to maintain in effect directors’ and officers’ insurance with terms, conditions, retentions and limits of liability that are in the aggregate at least as favorable as those contained in such directors’ and officers’

insurance policies in effect as of the date hereof. Promptly following election to the Board, the Company shall enter into the Company's standard indemnification agreement with each Series A Preferred Director providing for indemnification to the fullest extent permitted by applicable Law.

## 11. Indemnification.

11.1 Notwithstanding any termination of this Agreement, the Company shall indemnify and hold harmless the Investor and any participating Permitted Holder, and their respective officers, directors, employees, agents, partners, members, stockholders, representatives and affiliates, and each person or entity, if any, that controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and the officers, directors, employees, agents and employees of each such controlling Person (each, an "Investor Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and

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expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals), joint or several, arising out of or based upon any untrue or alleged untrue statement of material fact contained or incorporated by reference in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act) prepared by the Company or authorized by it in writing for use by the Investor or any amendment or supplement thereto; or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided that the Company shall not be liable to such Investor Indemnitee to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (i) any untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Investor Indemnitee claiming indemnification specifically for inclusion therein, (ii) offers or sales effected by or on behalf such Investor Indemnitee "by means of" (as defined in Securities Act Rule 159A) a "free writing prospectus" (as defined in Securities Act Rule 405) that was not authorized in writing by the Company, or (iii) the failure to deliver or make available to a purchaser of Registrable Securities a copy of any preliminary prospectus, pricing information or final prospectus contained in the applicable registration statement or any amendments or supplements thereto (to the extent the same is required by applicable Law to be delivered or made available to such purchaser at the time of sale of contract); provided that the Company shall have delivered to the Investor such preliminary prospectus or final prospectus contained in the applicable registration statement and any amendments or supplements thereto pursuant to 4.4 no later than the time of contract of sale in accordance with Rule 159 under the Securities Act.

11.2 The Investor shall indemnify and hold harmless the Company and its officers, directors, employees, agents, representatives and affiliates against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals) arising out of or based upon any untrue or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, but only to the extent, that such untrue statements or omissions are based solely upon written information relating to the Investor furnished to the Company by or on behalf of the Investor specifically for inclusion in the documents referred to in the foregoing indemnity. In no event shall the liability of the Investor hereunder be greater in amount than the dollar amount of the net proceeds received by the Investor and any participating Permitted Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

11.3 If any proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense in such proceeding, including the employment of

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counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with such defense; provided that any such notice or other communication pursuant to this 11 between the Company and an Indemnifying Party or an Indemnified Party, as the case may be, shall be delivered to or by, as the case may be, the Investor; provided, further, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this 11, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party. An Indemnified Party shall have the right to employ separate counsel in any such proceeding and to participate in the defense of such proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such proceeding; or (3) the named parties to any such proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that representation of both such Indemnified Party and the Indemnifying Party by the same counsel would be inappropriate because of an actual conflict of interest between the Indemnifying Party and such Indemnified Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such proceeding effected without its written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such proceeding. All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, promptly upon receipt of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder, provided that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification under this 11).

11.4 If the indemnification provided for in 11.1 or 11.2 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to in 11.1 or 11.2, as the case may be, or is insufficient to hold the Indemnified Party harmless as contemplated therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative

fault of the Indemnified Party, on the one hand, and the Indemnifying Party, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and of the Indemnified Party, on the other hand, shall be determined by reference to, among other factors, whether the untrue or alleged untrue statement of a material fact or omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Investor agree that it would not be just and equitable if contribution pursuant to this 11.4 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this 11.4. Notwithstanding the foregoing, in no event shall the liability of the Investor hereunder be greater in amount than the dollar amount of the net proceeds received by the Investor and any participating Permitted Holder upon the sale of the Registrable Securities giving rise to such contribution obligation. No Indemnified Party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from an Indemnifying Party not guilty of such fraudulent misrepresentation.

**12. Agreement to Furnish Information.** If reasonably requested by the Company or the book-running managing underwriters of Common Stock (or other securities of the Company convertible into Common Stock), the Investor and any participating Permitted Holder shall provide such information regarding the Investor and any participating Permitted Holder, and their respective Registrable Securities, as may be reasonably required by the Company or such representative of the book-running managing underwriters in connection with the filing of a registration statement and the completion of any public offering of the Registrable Securities pursuant to this Agreement.

**13. Rule 144 Reporting.** With a view to making available to the Investor the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities that are Common Stock to the public without registration, the Company agrees to use its commercially reasonable efforts to: (i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of this Agreement; (ii) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and (iii) so long as the Investor and any Permitted Holder owns any Registrable Securities, furnish to the Investor forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as the Investor may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such Common Stock without registration.

**14. Section 16b-3.** So long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, the Board shall take such action as is reasonably necessary to cause the exemption of any acquisition or disposition (or deemed acquisition or disposition) of Preferred Shares, shares of Series A Preferred Stock issued as PIK Dividends, shares of Common Stock or any

other Registrable Securities by the Investor from the liability provisions of Section 16(b) of the Exchange Act pursuant to Rule 16b-3 so long as such exemption is not prohibited by applicable Law; for the avoidance of doubt, the Company shall pass one or more exemptive resolutions by the Board each time there is any purported acquisition or disposition of Preferred Shares, shares of Series A Preferred Stock issued as PIK Dividends, shares of Common Stock or any other capital stock of the Company by the Investor with requisite specificity to exempt such purported acquisition or disposition from the liability provisions of Section 16(b) of the Exchange Act pursuant to Rule 16b-3.

**15. Confidentiality.**

15.1 The parties acknowledge and agree that each Series A Preferred Director may share Confidential Information with the Investor and its affiliates, to the extent reasonably necessary to monitor, evaluate or otherwise make decisions in connection with its investment in the Preferred Shares or the Company. The Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any Confidential Information obtained from the Company pursuant to the terms of this Agreement (including, without limitation, notice of the Company's intention to file a registration statement); provided, however, that the Investor may disclose Confidential Information (i) to its attorneys, accountants, consultants, and other professionals to the extent reasonably necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from the Investor, if such prospective purchaser agrees in writing to be bound by the provisions of this 15.1; (iii) in connection with periodic reports to its investors, partners, affiliates or members, the Investor may provide summary information regarding the Company's financial information in such reports, as long as such investors, partners, affiliates and members are advised that such information is confidential or (iv) as may otherwise be required by Law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure. Receipt of Confidential Information shall not be imputed to any entity, whether or not an affiliate of the Investor, solely by virtue of the fact that the Investor's director, officer, employee, agent, contractor, consultant or advisor is also a director, officer, employee, agent, contractor, consultant or advisor of such entity.

15.2 Notwithstanding anything to the contrary herein, the restrictions contained in 15.1 shall not apply to information furnished to Series A Preferred Director in his or her capacity as a director of the Company to the extent of his or her lawful use of such information in such capacity. Nothing herein shall limit any such persons from fulfilling his or her fiduciary and other duties under applicable Law as members of the Board.

15.3 For so long as the Investor holds any shares of Registrable Securities, and except for legally required disclosures (including in any registration statement) the Company, its Subsidiaries and their respective officers and directors shall not, and the Company will cause its and its Subsidiaries' employees not to, without the prior approval of the Investor, use the corporate name, trade name or logo of the Investor or any Permitted Holder, any of its

16. **Termination.** Other than as expressly set forth in this Agreement, this Agreement shall terminate (a) upon the mutual written agreement of the Company and the Investor or (b) the date on which the Investor or any Permitted Holder no longer holds any Preferred Shares or Registrable Securities.

17. **Miscellaneous.**

17.1 **No Inconsistent Agreements; Additional Rights.** The Company represents and warrants that it has not entered into, and agrees that it will not enter into, any agreement with respect to its securities that violates or subordinates or is otherwise inconsistent with the rights granted to the Investor under this Agreement. If the Company enters into any agreement after the date hereof granting any Person registration rights with respect to any security of Parent which agreement contains any material provisions more favorable to such Person than those set forth in this Agreement, Parent will notify the Investor and will agree to such amendments to this Agreement as may be necessary to provide these rights to the Investor, at Investor's election.

17.2 **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Delaware without regard to any choice of laws or conflict of laws provisions that would require the application of the laws of any other jurisdiction.

17.3 **Jurisdiction; Enforcement.** The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in any state or federal courts located in the Chancery Court of the State of Delaware and any state appellate court therefrom sitting in New Castle County in the State of Delaware (or, solely if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). In addition, each of the parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party or its successors or assigns, shall be brought and determined exclusively in any state or federal courts located in the Chancery Court of the State of Delaware and any state appellate court therefrom sitting in New Castle County in the State of Delaware (or, solely if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). The parties further agree that no party to this Agreement shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each of the parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in

any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this 17.17.7, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party hereby consents to service being made through the notice procedures set forth in 17.7 and agrees that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses set forth in 17.7 shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated by this Agreement. EACH OF THE PARTIES KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

17.4 **Successors and Assigns.** Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties; provided, however, that the rights and obligations of parties under this Agreement shall not be assignable to any Person without the prior written consent of the other party, which consent may be conditioned on such assignee or successor entering into executed a joinder agreement to this Agreement substantially in the form of Exhibit B (the "Joinder Agreement").

17.5 **No Third-Party Beneficiaries.** Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer, and this Agreement shall not confer, on any Person other than the parties to this Agreement any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no other Persons shall have any standing with respect to this Agreement or the transactions contemplated by this Agreement; provided, however that each Indemnified Party (but only, in the case of an Investor Indemnitee, if such Investor Indemnitee has complied with the requirements of 11.3, including the first proviso of 11.3) shall be entitled to the rights, remedies and obligations provided to an Indemnified Party under 11, and each such Indemnified Party shall have standing as a third-party beneficiary under 11 to enforce such rights, remedies and obligations.

17.6 **Entire Agreement.** This Agreement, the Purchase Agreement, the Certificate of Designation and the other documents delivered pursuant to the Purchase Agreement constitute the full and entire understanding and agreement among the parties hereto with regard to the subjects of this Agreement and such other agreements and documents.

17.7 **Notices.** Except as otherwise provided in this Agreement, all notices, requests, claims, demands, waivers and other communications required or permitted under this



Agreement shall be in writing and shall be mailed by reliable overnight delivery service or delivered by hand, facsimile or messenger, and email, as follows:

if to the Company:

Synchronoss Technologies, Inc.  
200 Crossing Blvd.  
Bridgewater, NJ 08807  
Facsimile No: (908) 231-0762  
Attention: Ronald Prague, Esq., Executive Vice President and General Counsel  
Email: ronald.prague@synchronoss.com

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

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP  
One Marina Park Drive, Suite 900  
Boston, MA 02210  
Attention: Marc Dupré  
Andrew Luh  
Facsimile: (617) 648-9199  
Email: mdupre@gunder.com  
aluh@gunder.com

if to the Investor:

c/o Siris Capital Group, LLC  
601 Lexington Avenue, 59th Floor, New York, NY 10022  
Facsimile No: 212-231-2680  
Attention: General Counsel  
Email: legalnotices@siriscapital.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019  
Attention: Andrew J. Nussbaum  
Igor Kirman  
Facsimile: (212) 403-2000  
Email: AJNussbaum@wlrk.com  
IKirman@wlrk.com

or in any such case to such other address, facsimile number or telephone as any party hereto may, from time to time, designate in a written notice given in a like manner. Notices shall be deemed given when actually delivered by overnight delivery service, hand or messenger, or when received by facsimile if promptly confirmed.

17.8 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party to this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of or acquiescence in any breach or default, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default. All remedies, either under this Agreement or by law or otherwise afforded to the Investor, shall be cumulative and not alternative.

17.9 Expenses. The Company and the Investor shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby, except as otherwise provided in 3.

17.10 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the Investor or, in the case of a waiver, by the party against whom the waiver is to be effective. Any consent hereunder and any amendment or waiver of any term of this Agreement by the Company must be approved by a majority of directors voting who are not Series A Preferred Directors. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities at the time outstanding (including securities convertible into Registrable Securities), each future holder of all such Registrable Securities, and the Company.

17.11 Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as parties hereto and only with respect to the specific obligations undertaken by such parties as set forth herein with respect to such parties and no other Person shall have any liability for any obligations or liabilities based upon, arising out of, or related to this Agreement or the Transactions and no Person who is not a named party to this Agreement, including without limitation any present or past director, officer, employee, incorporator, member, partner, direct or indirect equityholder (including any members, partners or stockholders), manager, employee, incorporator, controlling person, management company, general partner, affiliate, trustees, agent, attorney, advisor, permitted assign and predecessor of any named party to this Agreement ("Non-Party Affiliates"), shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose damages of an entity party against its owners or

affiliates) for any damages arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, non-performance, interpretation, termination, enforcement, construction or execution or any of the transactions contemplated hereby and each party hereto hereby waives and releases all such damages, claims and obligations against any such Non-Party Affiliates.

17.12 Counterparts. This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile or in electronic format, each of which may be executed by less than all the parties, each of which shall be enforceable against the

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parties actually executing such counterparts and all of which together shall constitute one instrument.

17.13 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms.

17.14 Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to a Section or Schedule, such reference shall be to a Section or Schedule of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute, rule or regulation defined or referred to in this Agreement means such agreement, instrument or statute, rule or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Any reference to any section under the Securities Act or Exchange Act, or any rule promulgated thereunder, shall include any publicly available interpretive releases, policy statements, staff accounting bulletins, staff accounting manuals, staff legal bulletins, staff "no-action", interpretive and exemptive letters, and staff compliance and disclosure interpretations (including "telephone interpretations") of such section or rule by the SEC. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

[signature page follows]

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

SILVER PRIVATE HOLDINGS I, LLC

By: \_\_\_\_\_

Name:

Title:

SYNCHRONOSS TECHNOLOGIES, INC.

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Investor Rights Agreement]

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**EXHIBIT A**

**Board**

Series A Preferred Directors

[·]

[·]

Independent Directors

[·]

[·]

[·]

[·]

Company Directors

[·]  
[·]  
[·]  
[·]

**Nominating Committee**

Members

[Investor's designee]  
[Investor's designee]  
[·]  
[·]

**EXHIBIT B**

**Form of Joinder Agreement to Investor Rights Agreement**

[ ], 20[ ]

Reference is hereby made to the Investor Rights Agreement, dated [·], 201[ ] (the "Investor Rights Agreement"), by and among Synchronoss Technologies, Inc., a Delaware corporation (the "Company"), and Silver Private Holdings I, LLC, a Delaware limited liability company (the "Investor").

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Investor Rights Agreement.

1. Joinder. The undersigned hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, it shall be deemed to be a party to the Investor Rights Agreement as if it were an original signatory thereto and hereby makes as of the date of the Investor Rights Agreement the representations and warranties and expressly assumes, and agrees to perform and discharge, all of the obligations and liabilities of the "Company" under the Investor Rights Agreement, including without limitation, any indemnity and contribution obligations under the Investor Rights Agreement. All references in the Investor Rights Agreement to the "Company" shall hereafter mean the undersigned.

2. Representations and Warranties. The undersigned hereby represents and warrants to the Investor that it has all requisite power and authority to execute, deliver and perform its obligations under this Joinder Agreement to the Investor Rights Agreement and it has duly and validly taken all necessary action for the consummation of the transactions contemplated hereby and by the Investor Rights Agreement and that it has duly authorized, executed and delivered this Joinder Agreement to the Investor Rights Agreement and it is a valid and legally binding agreement enforceable against such undersigned in accordance with its terms.

3. Counterparts. This Joinder Agreement to the Investor Rights Agreement may be signed in one or more counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall constitute an original and all of which together shall constitute one and the same agreement.

4. Amendments. No amendment or waiver of any provision of this Joinder Agreement to the Investor Rights Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties thereto.

5. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

6. Severability of Provisions. In the event that any one of more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

7. Applicable Law. This Joinder Agreement to the Investor Rights Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in the State of Delaware. The parties hereto each hereby waive any right to

trial by jury in any action, proceeding or counterclaim arising out of or relating to this Joinder Agreement to the Investor Rights Agreement.

*[signature page follows]*

IN WITNESS WHEREOF, the undersigned have executed this Joinder Agreement to the Investor Rights Agreement as of the date first written above.

[·]

By:

\_\_\_\_\_  
Name:  
Title:

The foregoing Joinder Agreement to the Investor Rights Agreement is hereby confirmed and accepted as of the date first above written.

SILVER PRIVATE HOLDINGS I, LLC

By: \_\_\_\_\_  
Name:  
Title:

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**EXHIBIT B**  
**Form of Series A Certificate of Designations**

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**FORM OF CERTIFICATE OF DESIGNATIONS OF  
SERIES A CONVERTIBLE PARTICIPATING  
PERPETUAL PREFERRED STOCK,  
PAR VALUE \$0.0001 PER SHARE, OF  
SYNCHRONOSS TECHNOLOGIES, INC.**

\_\_\_\_\_  
Pursuant to Sections 151 and 103 of the  
General Corporation Law of the State of Delaware  
\_\_\_\_\_

The undersigned, Chief Executive Officer, does hereby certify that:

1. The undersigned is the Chief Executive Officer of Synchronoss Technologies, Inc., a Delaware corporation (the "Company");
2. The Company is authorized to issue ten million (10,000,000) shares of preferred stock, par value \$0.0001 per share ("Preferred Stock"), none of which has been issued; and
3. The following resolutions were duly adopted by the board of directors of the Company (the "Board of Directors");

**WHEREAS**, the Company's Restated Certificate of Incorporation, as may be amended, modified or supplemented from time to time (the "Certificate of Incorporation"), authorizes the Board of Directors to issue, without stockholder approval, Preferred Stock by filing a certificate pursuant to the laws of the State of Delaware to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof;

**WHEREAS**, it is the desire of the Board of Directors to fix the designation, powers, preferences and rights of a new series of the Preferred Stock, which shall consist of eight hundred thousand (800,000) shares of Preferred Stock that the Company has the authority to issue as Series A Convertible Participating Perpetual Preferred Stock, as follows.

**NOW, THEREFORE, BE IT RESOLVED**, that pursuant to the authority vested in the Board of Directors by Article IV of the Certificate of Incorporation and Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors does hereby designate, create, authorize and provide for the issue of a series of eight hundred thousand (800,000) shares of Preferred Stock, par value \$0.0001 per share, having the powers, preferences and rights, and qualifications, limitations and restrictions that are set forth in this resolution of the Board of Directors pursuant to authority expressly vested in it by the provisions of the Certificate of Incorporation and hereby constituting an amendment to the Certificate of Incorporation as follows:

**18. Designation.** The designation of the series of Preferred Stock is "Series A Convertible Participating Perpetual Preferred Stock," par value \$0.0001 per share (the "Series A Preferred Stock"). Each share of the Series A Preferred Stock shall be identical in all respects to

every other share of the Series A Preferred Stock. The Series A Preferred Stock shall be perpetual, unless redeemed or converted in accordance with this Certificate of Designations.

**19. Number of Shares.** The authorized number of shares of the Series A Preferred Stock is 410,000. Series A Preferred Stock that is redeemed, purchased or otherwise acquired by the Company, or converted into another class or series of Capital Stock, shall not be reissued as Series A Preferred Stock and the Company shall take such actions as are necessary to cause such acquired or converted shares to resume the status of authorized but unissued shares of Preferred Stock.

**20. Defined Terms and Rules of Construction.**

**20.1 Definitions.** As used herein with respect to the Series A Preferred Stock:

“Accrued Amount” shall mean, with respect to any share of the Series A Preferred Stock, the sum of the Liquidation Preference and the Accrued Dividends with respect to such share, in each case, as of the applicable date of redemption.

“Accrued Dividends” shall mean, as of any date, with respect to any share of the Series A Preferred Stock, all Preferred Dividends that have accrued on such share pursuant to 21.2, whether or not declared, but that have not, as of such date, been paid in cash or in kind.

“Affiliate” of any Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, “control” when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Applicable Quarter” has the meaning ascribed to it in 26.2.

“Beneficially Own” shall mean “beneficially own” as defined in Rule 13d-3 under the Exchange Act.

“Board of Directors” has the meaning ascribed to it in the Recitals above.

“Business Day” shall mean a day except a Saturday, a Sunday or other day on which banks in the City of New York are authorized or required by applicable law to be closed.

“Bylaws” shall mean the Amended and Restated Bylaws of the Company in effect on the date hereof, as they may be amended from time to time.

“Capital Stock” shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (in each case however designated) stock issued by the Company.

“Capped Holders” has the meaning ascribed to it in 22.3(a).

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“Certificate of Designations” shall mean this Certificate of Designations relating to the Series A Preferred Stock, as it may be amended from time to time.

“Certificate of Incorporation” has the meaning ascribed to it in the Recitals above.

“Change of Control” shall mean the occurrence of any of the following:

(1) any “person” or “group” (within the meaning of Section 13(d)(3) and 14(d)(2) of the Exchange Act) is or becomes the Beneficial Owner of more than 50% of the total voting power of the Voting Stock; or

(2) Consummation of a reorganization, reclassification, merger, tender offer, statutory share exchange or consolidation or similar transaction involving the Company or any of its Subsidiaries, a sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its Subsidiaries (each, a “Business Combination”), in each case unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the shares of Voting Stock immediately prior to such Business Combination beneficially own, immediately following the Business Combination and any related transactions, more than 50% of the outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) and the combined voting power of the outstanding voting securities entitled to vote generally in the election of directors (or, for a non-corporate entity, equivalent governing body), as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more Subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Voting Stock, as the case may be; and (B) no Person beneficially owns 50% or more of the outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) of the entity resulting from such Business Combination or of the combined voting power of the outstanding voting securities of such entity, except to the extent that such ownership existed prior to the Business Combination.

“Close of Business” shall mean 5:00 p.m., Eastern Time, on any Business Day.

“Closing Price” shall mean the per share closing price of the Common Stock, or if no closing sale price is reported, the last reported sale price on the applicable Trading Day on the Nasdaq Global Select Market (or, if the Common Stock is not traded on Nasdaq Global Select Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)).

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

“Commission” shall mean the U.S. Securities and Exchange Commission, including the staff thereof.

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

“Company” has the meaning ascribed to it in the Recitals above.

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“Company Redemption Date” has the meaning ascribed to it in 22.4(b).

“Company Redemption Notice” has the meaning ascribed to it in 22.4(b).

“Company Redemption Price” has the meaning set forth in 22.4(a).

“Conversion Cap” shall mean, at the time of determination, 19.9% of the issued and outstanding shares of Voting Stock on an as converted basis (for the avoidance of doubt, after giving effect to any issuance with respect to which the Conversion Cap is being calculated).

“Conversion Cutback” has the meaning set forth in Section 5(c).

“Conversion Price” shall mean, with respect to a share of Series A Preferred Stock, a dollar amount equal to the quotient of (1) the sum of (A) the Liquidation Preference with respect to such share as of the conversion date and (B) the Accrued Dividends from and including the immediately preceding Dividend Payment Date to but excluding the conversion date and (2) \$1,000.

“Conversion Rate” shall mean 55.5556, subject to adjustment as set forth in 24.

“Conversion Shares” shall mean shares of Common Stock issued to a Capped Holder upon the conversion of shares of Series A Preferred Stock.

“Current Market Price” shall mean the average Closing Price for the ten (10) consecutive Trading Days immediately preceding, but not including, the date as of which the Current Market Price is to be determined, adjusted to take into account the occurrence during such period of any event described in 24.

“Debt Document” shall mean each agreement in respect of indebtedness for borrowed money that is entered into by the Company or any of its Subsidiaries from time to time and as may be amended, supplemented, restated, renewed, replaced, refinanced or otherwise modified from time to time. For the avoidance of doubt, (1) obligations under multiple agreements may not be aggregated for purposes of satisfying the definition of Debt Document; (2) mortgages, real estate leases, capital lease obligations, purchase money agreements, sale-leaseback transactions, equipment financing, inventory financing, letters of credit and receivables financing shall be deemed to be “Debt Documents” for all purposes hereunder; and (3) interest rate swaps, currency or commodity hedges and other derivative or similar instruments, measured on the basis of liability to the Company determined as of the date of the most recent quarterly or annual balance sheet of the Company, and not based on notional amount, shall be deemed to be “Debt Documents” for all purposes hereunder.

“Distributed Property” shall have the meaning ascribed to it in 24.3.

“Dividend Payment Date” shall mean January 1, April 1, July 1 and October 1 of each year, commencing on January 1, 2018; provided that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series A Preferred Stock on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day.

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“Dividend Period” shall mean the period commencing on and including a Dividend Payment Date and shall end on and include the day immediately preceding the next Dividend Payment Date; provided that the initial Dividend Period shall commence on and include the Original Issue Date and shall end on and include the day immediately preceding the first Dividend Payment Date.

“Dividend Rate” shall mean 14.5% per annum.

“EBITDA Non-Compliance” shall have the meaning ascribed to it at the end of Section 9(b).

“Equity-Linked Securities” shall mean any security or instrument convertible into, exercisable or exchangeable for Capital Stock of the Company.

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

“Fundamental Change” shall mean the occurrence of any of the following: (1) a Change of Control or (2) approval or adoption by the stockholders of the Company of a liquidation or dissolution of the Company.

“Fundamental Change Notice” shall have the meaning ascribed to it in 22.2(b).

“Fundamental Change Price” shall have the meaning ascribed to it in 22.2(a).

“Fundamental Change Purchase Date” shall have the meaning ascribed to it in 22.2(b).

“Independent Majority” shall have the meaning ascribed to it in 24.5.

“Investor” shall mean Silver Private Holdings I, LLC, a Delaware limited liability company.

“Investor Rights Agreement” shall mean the Investor Rights Agreement, dated as of [•], [•], as may be amended from time to time, by and between the Company and the Investor.

“Junior Stock” shall mean the Common Stock and any other class or series of Capital Stock that ranks junior to the Series A Preferred Stock (1) as to the payment of dividends and (2) as to the distribution of assets on any liquidation, dissolution or winding up of the Company.

“Leverage Ratio” shall have the meaning set forth in Section 9(b)(3).

“Leverage Ratio Calculation” as of the last day of a specified fiscal quarter of the Company shall mean the ratio of (1) the total amount of consolidated indebtedness of the Company outstanding as of the last day of such fiscal quarter to (2) LTM EBITDA for the twelve-month period ended on the last day of such fiscal quarter, it being understood that in all cases the total amount of consolidated indebtedness of the Company shall include the amount of the aggregate Liquidation Preference and Accrued Dividends with respect to all shares of Series A Preferred Stock outstanding as of the last day of such fiscal quarter.

“Liquidating Distribution” shall have the meaning ascribed to it in 24.3.

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“Liquidation Preference” shall initially mean \$1,000 per share of Series A Preferred Stock; provided, however, that to the extent that the Company does not declare and pay a dividend in cash or declare and pay a PIK Dividend, in either case, on a Dividend Payment Date pursuant to 21.2 and (c), on the applicable Dividend Payment Date, an amount equal to the Net Preferred Dividend shall be added to the Liquidation Preference of such share as of such applicable Dividend Payment Date.

“LTM EBITDA” shall have the meaning ascribed to it in 26.2(c).

“Make-Whole Redemption Date” has the meaning ascribed to it in 22.3(b).

“Make-Whole Redemption Notice” has the meaning ascribed to it in 22.3(b).

“Make-Whole Redemption Price” has the meaning ascribed to it in 22.3(a).

“Net Preferred Dividend” has the meaning ascribed to it in 21.2.

“Nominating Committee” means the Nominating and Corporate Governance Committee of the Board of Directors.

“Open of Business” shall mean 9:00 a.m., Eastern Time, on any Business Day.

“Optional Redemption Date” has the meaning ascribed to it in 22.1(a).

“Original Issue Date” shall mean the date on which the Investor and the Company consummate the purchase and sale of 185,000 shares of the Series A Preferred Stock pursuant to the Securities Purchase Agreement.

“Parity Stock” shall mean any class or series of Capital Stock (other than the Series A Preferred Stock) that ranks equally with the Series A Preferred Stock both (1) in the priority of payment of dividends and (2) in the distribution of assets upon any liquidation, dissolution or winding up of the Company (in each case, without regard to whether dividends accrue cumulatively or non-cumulatively).

“Per Share Amount” shall have the meaning ascribed to it in 23.1.

“Person” shall mean an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, joint venture, other entity or group (as defined in the Exchange Act), including a governmental authority.

“PIK Dividend” has the meaning ascribed to in 21.3.

“Preferred Dividend” has the meaning ascribed to it in 21.2.

“Preferred Percentage” shall mean, at any time of determination, the quotient, expressed as a percentage, of (1) the number of issued and outstanding shares of Voting Stock on an as converted basis (without regard to any Conversion Cutback pursuant to Section 5(c)(1) or Section 5(d)(1) or any limitation on conversion pursuant to Section 6(d)) held by holders of

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shares of Series A Preferred Stock at such time divided by (2) the total number of issued and outstanding shares of Voting Stock, on an as converted basis (without regard to any Conversion Cutback pursuant to Section 5(c)(1) or Section 5(d)(1) or any limitation on conversion pursuant to Section 6(d)), at such time.

“Preferred Stock” has the meaning ascribed to it in the Recitals above.

“Pre-Redemption Conversion Election” has the meaning ascribed to it in 22.3(a).

“Pro Forma Leverage Ratio” in respect of a specified action shall mean the Leverage Ratio giving pro forma effect to any indebtedness that would be incurred or assumed in connection with such action. For purposes of this definition, “giving pro forma effect” shall mean taking into account: (1) the incurrence of any indebtedness by the Company or its Subsidiaries (or, in the case of 4, the Person or business involved in the relevant transaction with the Company) that could reasonably be expected to be required to effect such action (for this purpose calculating the total amount of consolidated indebtedness outstanding as if the Company had incurred such indebtedness as of the last day of the most recently completed fiscal quarter of the Company); and (2) with respect to any action described in 4, in addition to the adjustment set forth in clause (1) above, (x) the total amount of consolidated indebtedness of the Person or business involved in the relevant transaction with the Company (for this purpose calculating the total amount of consolidated indebtedness outstanding by adding such Person’s or business’ total consolidated indebtedness outstanding as of the last day of the most recently completed fiscal quarter of the Company to the Company’s total consolidated indebtedness outstanding as of the last day of the most recently completed fiscal quarter of the Company), and (y) the total amount of Acquisition LTM EBITDA, in the case of this clause (y) to be taken into account by adding the Acquisition LTM EBITDA as of the last day of the most recently completed fiscal quarter of the Company to LTM EBITDA (of the Company) as of the last day of the most recently completed fiscal quarter of the Company when calculating the denominator of the Pro Forma Leverage Ratio (where Acquisition LTM EBITDA means LTM EBITDA of the Person or business involved in the relevant transaction with the Company, substituting such Person for the Company in the definition of LTM EBITDA (and otherwise determined as set forth therein)).

“Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract, this Certificate of Designations or otherwise).

“Redemption Date” shall mean the date on which any holder elects to redeem all or any portion of its outstanding shares of Series A Preferred Stock pursuant to Section 5(a)(1).

“Redemption Notice” shall have the meaning ascribed to it in 22.1(b).

“Redemption Price” shall have the meaning ascribed to it in 22.1(a).

“Redemption Right” shall have the meaning ascribed to it in 22.1(a).

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“Securities Purchase Agreement” shall mean the Securities Purchase Agreement, dated as of October 17, 2017, as may be amended from time to time, by and between the Company and the Investor.

“Series A Preferred Director” has the meaning ascribed to it in 25.1.

“Series A Preferred Stock” shall have the meaning ascribed to it in 18.

“Spin-Off” shall have the meaning ascribed to it in 24.3.

“Stockholder Approval” shall mean the requisite approval under the listing standards of the Nasdaq Stock Market, including, if applicable, Nasdaq Stock Market Rule 5635(b), by the stockholders of the Company of the transactions contemplated by the Securities Purchase Agreement, including the purchase and sale pursuant thereto of 185,000 shares of the Series A Preferred Stock having the rights and privileges set forth in this Certificate of Designations and the issuance thereof to the Investor.

“Subsidiary” of any Person shall mean any corporation, partnership, joint venture, limited liability company, trust or other form of legal entity of which (or in which) more than 50% of (1) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (2) the interest in the capital or profits of such partnership, joint venture or limited liability company or (3) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries.

“Thirty-Month Accrued Amount” shall mean, with respect to any share of Series A Preferred Stock, the sum of (1) the Liquidation Preference and (2) the product of (A) the aggregate amount of all Preferred Dividends that would have been paid in respect of an outstanding share of Series A Preferred Stock in each remaining Dividend Period from the Fundamental Change Purchase Date through the thirty-month (30) anniversary of the Original Issue Date assuming all such Preferred Dividends were paid in the form of PIK Dividends and (B) \$1,000.

“Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the Nasdaq Global Select Stock Market (or, if the Common Stock is not traded on Nasdaq Global Select Stock Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)).

“Trigger Event” shall have the meaning ascribed to it in 24.3.

“Voting Cap” shall have the meaning ascribed to it in 27.2.

“Voting Stock” shall mean Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect one or more members of the Board of Directors (without regard to whether or not, at the relevant time, Capital Stock of any other class or classes

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(other than Common Stock) shall have or might have voting power by reason of the happening of any contingency).

**20.2 Rules of Construction.** Unless the context otherwise requires: (1) a term has the meaning assigned to it herein; (2) an accounting term not otherwise defined herein has the meaning accorded to it in accordance with generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis; (3) words in the singular include the plural, and in the plural include the singular; (4) “or” is not exclusive; (5) “will” shall be interpreted to express a command; (6) “including” means including without limitation; (7) provisions apply to successive events and transactions; (8) references to any Section or clause refer to the corresponding Section or clause, respectively, of this Certificate of Designations; (9) any reference to a day or number of days, unless expressly referred to as a Business Day or Trading Day, shall mean the respective calendar day or number of calendar days; (10) references to sections of or rules under the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, and any term defined by reference to a section of or rule under the Exchange Act shall include Commission and judicial interpretations of such section or rule; (11) references to sections of the Code shall be deemed to include any substitute, replacement or successor sections as well as the rules and regulations promulgated thereunder from time to time; (12) headings are for convenience only; and (13) unless otherwise expressly provided in this Certificate of Designations, a reference to any specific agreement or other document shall be deemed a reference to such agreement or document as amended from time to time in accordance with the terms of such agreement or document.

## **21. Dividends.**

**21.1 Participation with Dividends on Common Stock.** No dividend shall be declared or paid on the Common Stock during a Dividend Period unless such dividend is also declared or paid (as applicable) on the Series A Preferred Stock for such Dividend Period in an amount equal to (1) the Per Share Amount as of the Record Date for such dividend *multiplied* by (2) the amount per share distributed or to be distributed in respect of the Common Stock in connection with such dividend.



21.2 **Dividend Rate on Series A Preferred Stock.** In addition to participation in dividends on Common Stock as set forth in 21.1, the holders of the Series A Preferred Stock shall be entitled to receive, on each share of Series A Preferred Stock and with respect to each Dividend Period, an amount (such amount, the “Net Preferred Dividend”) equal to the Dividend Rate *multiplied* by the Liquidation Preference per share of Series A Preferred Stock (the “Preferred Dividend”). If and to the extent that the Company does not pay the entire Net Preferred Dividend on each share of Series A Preferred Stock for a particular Dividend Period in accordance with 21.2.3 on the applicable Dividend Payment Date for such period, the unpaid portion of the Net Preferred Dividend shall be added to the Liquidation Preference in accordance with the definition thereof. Amounts payable at the Dividend Rate shall begin to accrue on a daily basis and be cumulative from and including the Original Issue Date, whether or not the Company has funds legally available for such dividends or such dividends are declared, shall compound on each Dividend Payment Date (i.e., no dividends shall accrue on other dividends unless and until the Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable in arrears on the first Dividend Payment Date after such

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Dividend Period. Preferred Dividends that are payable on the Series A Preferred Stock on any Dividend Payment Date shall be payable to holders of record of the Series A Preferred Stock as they appear on the stock register of the Company on the Record Date for such dividend, which shall be the date 15 days prior to the applicable Dividend Payment Date. Preferred Dividends payable at the Dividend Rate on the Series A Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable at the Dividend Rate on the Series A Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month (i.e. during each Dividend Period, \$36.25 of Preferred Dividends shall accrue on each outstanding share of the Series A Preferred Stock, assuming no increase in the Liquidation Preference).

21.3 **Payment of Dividends.** The Preferred Dividend shall be payable, at the Company’s sole discretion, in kind in additional shares of Series A Preferred Stock (such shares, the “PIK Dividend”) or in cash. If the Company elects to make a PIK Dividend, the number of shares of Series A Preferred Stock to be issued in payment of such PIK Dividend with respect to each outstanding share of Series A Preferred Stock shall be determined by dividing (1) the Net Preferred Dividend by (2) the Liquidation Preference (including any amounts added to the initial Liquidation Preference pursuant to the proviso in the definition of Liquidation Preference and Section 4(b)) per share of Series A Preferred Stock. Anything to the contrary in this Certificate of Designations notwithstanding, cash dividends shall be paid only to the extent (A) the Company has funds legally available for such payment, (B) there are no provisions in any of the Debt Documents prohibiting the payment of cash dividends on the Series A Preferred Stock in such amount on the applicable Dividend Payment Date, and (C) the Board of Directors, or an authorized committee thereof, declares such dividend payable. To the extent the Board of Directors desires to declare any cash dividend or other distribution in cash on the Common Stock during any Dividend Period that requires a corresponding cash dividend on the Series A Preferred Stock in accordance with 21.1, it may do so only to the extent that (i) the Company has funds legally available for the payment of such dividend or distribution in cash on all of the shares of Common Stock and Series A Preferred Stock then outstanding, (ii) there are no provisions in any of the Debt Documents prohibiting the payment of cash dividends on the Common Stock and/or Series A Preferred Stock in such amount on the applicable Dividend Payment Date and (iii) such cash dividend or distribution on the Common Stock and the Series A Preferred Stock shall be payable only on the applicable Dividend Payment Date for such Dividend Period.

21.4 **Priority of Dividends.** The Series A Preferred Stock will rank, with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and redemption rights, senior to the Common Stock and each other class or series of Capital Stock now existing or hereafter authorized, classified or reclassified, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Series A Preferred Stock as to dividend rights, rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and redemption rights; provided, however, subject to Sections 21.1, 21.2 and 21.3, 24 and 25, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or an authorized committee thereof

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may be declared and paid on any Capital Stock, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment.

## 22. **Redemption.**

### 22.1 **Redemption Right.**

(a) At any time on and after the fifth (5<sup>th</sup>) anniversary of the Original Issue Date (the “Optional Redemption Date”), each holder shall have the right (the “Redemption Right”) to require the Company to redeem for cash any or all of the shares of Series A Preferred Stock (including, for the avoidance of doubt, outstanding shares of Series A Preferred Stock paid to such holders as PIK Dividends) of such holder outstanding at a redemption price (the “Redemption Price”) per share of Series A Preferred Stock, equal to the sum of (i) the Liquidation Preference per share of Series A Preferred Stock to be redeemed and (ii) any Accrued Dividends (up to and including the Redemption Date). In the event that any certificate for shares of Series A Preferred Stock shall be surrendered for partial redemption, the Company shall execute and deliver to or upon the written order of the holder of the certificate so surrendered a new certificate for the shares of Series A Preferred Stock not so redeemed. Shares of Series A Preferred Stock redeemed in accordance with this 22.1(a), shall return to the status of and constitute authorized but unissued shares of Preferred Stock, without classification as to series until such shares are once more classified as a particular series by the Board of Directors pursuant to the provisions of the Certificate of Incorporation.

(b) Such holder shall deliver to the Company a written notice of such redemption (a “Redemption Notice”) not less than fifteen (15) Business Days prior to the Redemption Date. The Redemption Notice must state the following: (A) the aggregate number of shares of Series A Preferred Stock to be redeemed; (B) the Redemption Date; (C) the Redemption Price; and (D) that Preferred Dividends on the shares to be redeemed will cease to accrue on such Redemption Date, provided that the Redemption Price shall have been paid in full on the Redemption Date.

(c) Subject to 22.1(d), upon the Redemption Date, the Company shall pay the Redemption Price in respect of each share of Series A Preferred Stock to such holder by wire transfer of immediately available funds on the Redemption Date. The Company shall remain liable for the payment of the Redemption

Price in respect of each share of Series A Preferred Stock and any Preferred Dividends with respect to the shares of Series A Preferred Stock to be redeemed to the extent such amounts are not promptly paid as provided herein.

(d) Solely in the event that the Company does not have the funds legally available for such redemption in cash on all of the shares of Common Stock and Series A Preferred Stock then outstanding, the Company shall, in lieu of paying such holder in cash, issue a senior unsecured note with a principal amount equal to the Redemption Price in respect of each share of Series A Preferred Stock of such holder, an interest rate equal to the Dividend Rate, a term to maturity of one year and such other terms as reasonably acceptable to the applicable holder.

## 22.2 Fundamental Change.

(a) In connection with any Fundamental Change, each holder of the Series A Preferred Stock shall have the right to require the Company to repurchase all or any part of such holder's Series

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A Preferred Stock for cash at a price per share equal to the greatest of (A) the Accrued Amount (including Accrued Dividends up to and including the Fundamental Change Purchase Date), (B) the Thirty-Month Accrued Amount (including Accrued Dividends up to and including the Fundamental Change Purchase Date) and (C) the value of the Common Stock that such holder would be entitled to receive if such holder had converted a share of Series A Preferred Stock pursuant to 23.1 immediately prior to the date of the Fundamental Change (based on the Closing Price on such date and, if holders of Common Stock have the right to elect the form of consideration in connection with such Fundamental Change, on the same basis), without regard to any reduction pursuant to 23.4 (as applicable, the "Fundamental Change Price").

(b) On or before thirty (30) days prior to the date of any Fundamental Change, or in the event an executive officer of the Company is not aware of such Fundamental Change at least thirty (30) days prior to the effective date of the Fundamental Change, as soon as otherwise practicable (but in any event within two Business Days of an executive officer of the Company becoming aware of such Fundamental Change), the Company shall deliver to the holder a written notice of such Fundamental Change (the "Fundamental Change Notice"). Such Fundamental Change Notice must: (A) specify a date that the Company will pay the Fundamental Change Price in respect of each share of Series A Preferred Stock (which shall be no earlier than thirty (30) days nor later than sixty (60) days from the date notice is mailed, such date the "Fundamental Change Purchase Date"); (B) that the decision as to whether to effect a redemption in connection with a Fundamental Change Offer may be accepted by delivery, no later than five (5) Business Days prior to the date specified in clause (A); (C) the Fundamental Change Price, specifying the individual components thereof; (D) that any shares of Series A Preferred Stock not tendered for payment shall continue to be outstanding and the holder shall remain entitled to, among other things, the payment of the Preferred Dividends thereon and the ability to exercise their conversion rights thereto and the Conversion Price following such Fundamental Change; and (E) the circumstances and material facts regarding such Fundamental Change (and the Company shall not enter into any confidentiality agreement in connection with any potential Fundamental Change that restricts, in any manner, the Company's ability to comply with its disclosure obligations to the holders of Series A Preferred Stock under this 22.2.2).

(c) On the Fundamental Change Purchase Date, the Company shall pay to the applicable holder the Fundamental Change Price in respect of each share of Series A Preferred Stock to be repurchased as specified in such holder's notice delivered to the Company by wire transfer of immediately available funds. The Company shall remain liable for the payment of the Fundamental Change Price in respect of each share of Series A Preferred Stock to the extent such amounts are not paid as provided herein. Notwithstanding the foregoing, in the event of a Fundamental Change on the basis of 22.2.2(a)(C), the Company or the third party acquirer, as applicable, shall pay such holders the Fundamental Change Price concurrently with the payment to the holders of Common stock in connection with such Fundamental Change; provided that the Company (or any successor entity) shall remain liable for the payment of the Fundamental Change Price to the extent such amounts are not paid as provided herein.

(d) On and after the Fundamental Change Purchase Date, shares of the Series A Preferred Stock repurchased, or to be repurchased, on such Fundamental Change Purchase Date shall no longer be deemed to be outstanding and all powers, designations, preferences and other rights of such holder as a holder of such shares (except the right to receive from the Company (or a third

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party acquiror, if applicable) the Fundamental Change Price in respect of each share of Series A Preferred Stock) shall cease and terminate with respect to such shares; provided, that in the event that any shares of Series A Preferred Stock are not repurchased due to a default in payment by the Company (or its successor) or because the Company (or its successor) is otherwise unable to or fails to pay the Fundamental Change Price in respect of each share of Series A Preferred Stock in full on the Fundamental Change Purchase Date, such shares shall remain outstanding and will be entitled to all of the powers, designations, preferences and other rights (including but not limited to the payment of Preferred Dividends and the conversion rights) as provided herein.

(e) Notwithstanding anything in this 22 to the contrary, each holder shall retain the right, through to the Close of Business three (3) days prior to the Fundamental Change Purchase Date (or if such third day prior to the Fundamental Change Purchase Date is not a Business Day, through the Close of Business on the immediately succeeding Business Day), to withdraw an election to have its shares of Series A Preferred Stock repurchased pursuant to this Section 52.2.2; provided, however, that where it exercises such right, the shares pertaining thereto shall not be repurchased pursuant to this 22.2.2.

(f) The Company will not enter into any agreement providing for or otherwise authorize, and the Company shall not have the corporate power to effect, a Fundamental Change constituting a Business Combination unless such third party acquiror agrees in writing to cause the Company to make the repurchases contemplated in and to otherwise comply in all respects with this 22.2 and agrees, for the benefit of the holder (including by making each holder of Series A Preferred Stock an express beneficiary of such agreement), that to the extent the Company is not legally able to repurchase the Series A Preferred Stock, such third-party acquiror or an Affiliate of the third-party acquiror will purchase the Series A Preferred Stock on the terms set forth in this 22.2.

(g) Any repurchase of the Series A Preferred Stock pursuant to this 22.2 shall be payable out of any cash legally available therefor, and if there is not a sufficient amount of cash available, then the Company shall or shall cause its Subsidiaries to, to the extent necessary, sell remaining assets of the Company or of its Subsidiaries, as applicable, legally available therefor for cash and shall use the proceeds therefrom to fund the repurchase of Series A Preferred Stock pursuant to this 22.2. To the extent that the Company has insufficient funds, after the sale of assets contemplated the preceding sentence, to repurchase all of the shares of Series A Preferred Stock pursuant to this 22.2, the Company shall repurchase as many of such shares as it has cash legally available therefor and shall thereafter from time to time, as soon as it shall have cash (including upon the future sale of assets by the Company or by its Subsidiaries as contemplated

by the preceding sentence) legally available therefor, make payment of as much of the remaining amount as it legally may until it has made such payment in its entirety. For the avoidance of doubt, such partial payments shall not reduce or waive the rights of any holder of Series A Preferred Stock hereunder.

### 22.3 Make-Whole Redemption.

(a) On and after the Original Issuance Date and prior to the thirty-month (30) anniversary of the Original Issuance Date, the Company, at its option, may redeem (out of funds legally available therefor) all outstanding shares of Series A Preferred Stock at a purchase price per share in cash equal to the sum of (A) the Accrued Amount (including Accrued Dividends up to

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and including the Make-Whole Redemption Date) and (B) the aggregate amount of all Preferred Dividends that would have been paid in respect of an outstanding share of Series A Preferred Stock in each remaining Dividend Period from the Make-Whole Redemption Date through the thirty-month (30) anniversary of the Original Issue Date assuming all such Preferred Dividends were paid in the form of PIK Dividend *multiplied by* \$1,000 (the "Make-Whole Redemption Price"); provided, however, that prior to any such redemption becoming effective, subject (prior to the receipt of Stockholder Approval) to Section 6(d), each holder of Series A Preferred Stock may, at such holder's election, convert any or all of such holder's outstanding shares of Series A Preferred Stock into the number of shares of Common Stock equal to the Per Share Amount for each such share (an election pursuant to this Section 5(c) or Section 5(d), a "Pre-Redemption Conversion Election"); provided, further, that, with respect to any redemption date occurring prior to the receipt of Stockholder Approval, if the Investor or any Affiliate of the Investor with which the Investor has formed a "group" (within the meaning of Rule 13d-5 under the Exchange Act) with respect to shares of Common Stock (the Investor, collectively with each such Affiliate, the "Capped Holders") has made a Pre-Redemption Conversion Election and if the sum, without duplication, of (A) the aggregate number of shares of Common Stock issued to such Capped Holders upon the conversion of the shares with respect to which such election was made and any Conversion Shares then held by such Capped Holders, plus (B) the number of shares of Common Stock underlying shares of Series A Preferred Stock that would be held at such time by such Capped Holders (after giving effect to such conversion) would exceed the Conversion Cap (without regard to the Conversion Cutback), then the Capped Holders making such election shall be entitled to convert such number of shares as would result in the sum of clauses (A) and (B) (after giving effect to such conversion) being equal to the Conversion Cap (after giving effect to the Conversion Cutback) (the provisions of this proviso being referred to as the "Conversion Cutback"). Each share of Series A Preferred Stock which by reason of the foregoing proviso is not converted shall be redeemed for cash in an amount equal to the dollar value of the Common Stock that its holder would be entitled to receive if such holder had converted such share of Series A Preferred Stock pursuant to 23.1 immediately prior to the Make-Whole Redemption Date (as defined below), based on the Closing Price on the Make-Whole Redemption Date (without regard to any reduction pursuant to 23.4).

(b) If the Company elects to redeem the outstanding shares of Series A Preferred Stock pursuant to 22.3(a) and the holders of Series A Preferred Stock have not made the Pre-Redemption Conversion Election, the "Make-Whole Redemption Date" shall be the date on which the Company elects to consummate such redemption. The Company shall deliver to the holders of Series A Preferred Stock a written notice of such redemption (a "Make-Whole Redemption Notice") not less than fifteen (15) Business Days prior to the Make-Whole Redemption Date. The Make-Whole Redemption Notice must state the following: the aggregate number of shares of Series A Preferred Stock to be redeemed, the Make-Whole Redemption Date, the Make-Whole Redemption Price and that the Preferred Dividends, if any, on the shares to be redeemed will cease to accrue on such Make-Whole Redemption Date; provided that the Make-Whole Redemption Price shall have been paid in full on the Make-Whole Redemption Date.

(c) Upon the Make-Whole Redemption Date, the Company shall pay the Make-Whole Redemption Price in respect of each share of Series A Preferred Stock to the holders of Series A Preferred Stock by wire transfer of immediately available funds. The Company shall remain

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liable for the payment of the Make-Whole Redemption Price in respect of each share of Series A Preferred Stock to the extent such amounts are not paid as provided herein.

(d) Shares of Series A Preferred Stock to be redeemed on the Make-Whole Redemption Date will, on and after such date, no longer be deemed to be outstanding and all powers, designations, preferences and other rights of such shares (except the right to receive from the Company the Make-Whole Redemption Price in respect of each share of Series A Preferred Stock) shall cease and terminate; provided that in the event that any shares of the Series A Preferred Stock are not redeemed due to a default in payment by the Company or because the Company is otherwise unable to or fails to pay the Make-Whole Redemption Price in cash in full on the Make-Whole Redemption Date, such shares will remain outstanding and will be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of the Preferred Dividends) as provided herein.

(e) Any redemption of the Series A Preferred Stock pursuant to this 22.3 shall be payable out of cash legally available therefor. The Company shall not be permitted to effect such redemption if the Company has insufficient funds to redeem the shares of Series A Preferred Stock to be so redeemed.

### 22.4 Company Redemption.

(a) On and after the thirty-month (30) anniversary of the Original Issuance Date, the Company, at its option, may redeem (out of funds legally available therefor) all outstanding shares of Series A Preferred Stock at a purchase price per share in cash equal to the Accrued Amount (the "Company Redemption Price"); provided, however, that prior to any such redemption by the Company becoming effective, the holders of Series A Preferred Stock may, at their election, make a Pre-Redemption Conversion Election; provided, further, that, with respect to any redemption date occurring prior to the receipt of Stockholder Approval, any Pre-Redemption Conversion Election pursuant to this Section 5(d) by a Capped Holder shall be subject to the Conversion Cutback. Each share of Series A Preferred Stock which by reason of the foregoing proviso is not converted shall be redeemed for cash in an amount equal to the dollar value of the Common Stock that its holder would be entitled to receive if such holder had converted such share of Series A Preferred Stock pursuant to 23.1 immediately prior to the Company Redemption Date (as defined below), based on the Closing Price on the Company Redemption Date (without regard to any reduction pursuant to 23.4).

(b) If the Company elects to redeem the outstanding shares of Series A Preferred Stock pursuant to 22.4(a) and the holders of Series A Preferred Stock have not made the Pre-Redemption Conversion Election, the "Company Redemption Date" shall be the date on which the Company elects to consummate such redemption. The Company shall deliver to the holders of Series A Preferred Stock a written notice of such redemption (a "Company Redemption

Notice”) not less than fifteen (15) Business Days prior to the Company Redemption Date. The Company Redemption Notice must state the following: the aggregate number of shares of Series A Preferred Stock to be redeemed, the Company Redemption Date, the Company Redemption Price and that the Preferred Dividends, if any, on the shares to be redeemed will cease to accrue on such Company Redemption Date; provided that the Company Redemption Price shall have been paid in full on the Company Redemption Date.

(c) Upon the Company Redemption Date, the Company shall pay the Company Redemption Price in respect of each share of Series A Preferred Stock to the holders of Series A Preferred Stock by wire transfer of immediately available funds. The Company shall remain liable for the payment of the Company Redemption Price in respect of each share of Series A Preferred Stock to the extent such amounts are not paid as provided herein.

(d) Shares of Series A Preferred Stock to be redeemed on the Company Redemption Date will, on and after such date, no longer be deemed to be outstanding and all powers, designations, preferences and other rights of such shares (except the right to receive from the Company the Company Redemption Price) shall cease and terminate; provided that in the event that any shares of the Series A Preferred Stock are not redeemed due to a default in payment by the Company or because the Company is otherwise unable to or fails to pay the Company Redemption Price in cash in full on the Company Redemption Date, such shares will remain outstanding and will be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of the Preferred Dividends) as provided herein.

(e) Any redemption of the Series A Preferred Stock pursuant to this 2222.4 shall be payable out of cash legally available therefor. The Company shall not be permitted to effect such redemption if the Company has insufficient funds to redeem the shares of Series A Preferred Stock to be so redeemed.

### 23. Conversion.

23.1 **Conversion at the Option of the Holders.** Each share of Series A Preferred Stock may be converted on any date, from time to time, at the option of the holder thereof, into the number of shares of Common Stock equal to the applicable Conversion Price *multiplied* by the Conversion Rate in effect at such time (without regard to any reduction pursuant to paragraph (d) of this Section 6) (the “Per Share Amount”). The right of conversion attaching to any shares of Series A Preferred Stock may be exercised by the holders thereof by delivering the shares to be converted to the office of the Company, accompanied by a duly signed and completed notice of conversion in form reasonably satisfactory to the Company. The conversion date shall be the date on which the shares of Series A Preferred Stock and the duly signed and completed notice of conversion are received by the Company. The Person entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock as of such conversion date, and such Person or Persons shall cease to be a record holder of the Series A Preferred Stock on that date. As promptly as practicable on or after the conversion date (and in any event no later than three Trading Days thereafter), the Company shall issue the number of shares of Common Stock issuable upon conversion by such holder (rounding any fractional share to the nearest whole share after aggregating all shares of Common Stock being issued to such holder upon such conversion). Such delivery shall be made, at the option of the applicable holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate holder on a book-entry basis or by mailing certificates evidencing the shares to the holders at their respective addresses as set forth in the conversion notice.

### 23.2 Underlying Common Stock.

(a) The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series A Preferred Stock then outstanding. Any shares of Common Stock issued upon conversion of Series A Preferred Stock shall be (A) duly authorized, validly issued and fully paid and nonassessable, (B) shall rank *pari passu* with the other shares of Common Stock outstanding from time to time and (C) shall be approved for listing on the Nasdaq Global Select Stock Market (or, if the Common Stock is not traded on Nasdaq Global Select Stock Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)).

(b) The Company will use its commercially reasonable efforts to cause and maintain the listing of shares of Common Stock on the Nasdaq Global Select Market. The Company shall not voluntarily delist the Common Stock from the Exchange. In the event that the Common Stock is delisted from the Exchange, the Company shall use its commercially reasonable efforts to take, or cause to be taken, all actions necessary to have such shares of Common Stock to be promptly listed for trading on any of the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, The New York Stock Exchange or any other United States national securities exchange.

23.3 **Taxes.** The Company shall pay any and all transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Series A Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

23.4 **Share Issuance Limitation.** Anything to the contrary in this 2323.1 notwithstanding, in respect of any conversion of the Series A Preferred Stock at the option of a Capped Holder with a conversion date occurring prior to the receipt of Stockholder Approval, , if the sum, without duplication, of (A) the aggregate number of shares of Common Stock issued to such Capped Holder upon such conversion and any Conversion Shares then held by the Capped Holders, plus (B) the number of shares of Common Stock underlying shares of Series A Preferred Stock that would be held at such time by the Capped Holders (after giving effect to such conversion), would exceed the Conversion Cap (without regard to any limitation on conversion pursuant to this Section 6(d)), then the Capped Holders shall be entitled to convert such number of shares as would result in the sum of clauses (A) and (B) (after giving effect to such conversion) being equal to the Conversion Cap (after giving effect to any such limitation on conversion). Any shares of Series A Preferred Stock which a holder has elected to convert but which, by reason of the previous sentence are not so converted, shall be treated as if the holder had not made such election to convert and such shares of Series A Preferred Stock shall remain outstanding.

**24. Dilution Adjustments.** The Conversion Rate shall be adjusted from time to time (successively and for each event described) by the Company as follows:

24.1 If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, issue shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination in respect of the Common Stock, then the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or combination, as applicable;
- CR<sub>1</sub> = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or share combination, as applicable;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or share combination, as applicable; and
- OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the Close of Business on the effective date of such share split or share combination, as applicable.

The Company shall not pay any dividend or make any distribution on shares of Common Stock held in treasury by the Company.

24.2 Except as otherwise provided for by 24.3, if the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, distribute to all or substantially all holders of its outstanding shares of Common Stock any options, rights or warrants entitling them for a period of not more than 45 days from the Record Date of such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the Closing Price of the Common Stock on the Trading Day immediately preceding the Record Date of such distribution, the Conversion Rate shall be adjusted based on the following formula:

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$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;
- CR<sub>1</sub> = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such distribution;
- X = the total number of shares of Common Stock issuable pursuant to such options, rights or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such options, rights or warrants *divided* by the average Closing Price of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement of such rights, options or warrants.

To the extent that shares of Common Stock are not delivered pursuant to any such options, rights or warrants that are non-transferable upon the expiration or termination of such options, rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the distribution of such options, rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered.

In determining the aggregate price payable to exercise such options, rights or warrants, there shall be taken into account any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

24.3 (i) If the Company, at any time or from time to time while any of the Series A Preferred Stock is outstanding, shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock shares of any class of Capital Stock, cash, evidences of its indebtedness, assets, property or rights or warrants to acquire Capital Stock or other securities, but excluding (A) dividends or distributions as to which an adjustment under 24.1 or 24.2 shall apply; (B) dividends or distributions paid exclusively in cash to the extent that the Series A Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with 21.1; and (C) Spin-Offs to which 24.3(ii) shall apply (any of such shares of Capital Stock, cash, indebtedness, assets, property or rights or warrants to acquire Common Stock or other securities, hereinafter in this 24.3 called the "Distributed Property"), then, in each such case the Conversion Rate shall be adjusted based on the following formula:

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$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;
- CR<sub>1</sub> = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;
- SP<sub>0</sub> = the average Closing Price of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Record Date for such distribution; and
- FMV = (i) for cash dividends or distributions, the amount of cash distributed and (ii) for other Distributed Property, the fair market value (as determined in good faith by the Board of Directors) of the portion of Distributed Property, in each case, with respect to each outstanding share of Common Stock on the Record Date for such distribution.

Notwithstanding the foregoing, if the then-fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than SP<sub>0</sub> as set forth above (a “Liquidating Distribution”), then in lieu of the foregoing adjustment, the Company shall distribute to each holder of Series A Preferred Stock on the date such Distributed Property is distributed to holders of Common Stock, but without requiring such holder to convert its shares of Series A Preferred Stock, the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Per Share Amount on the Record Date fixed for determination for stockholders entitled to receive such Liquidating Distribution; provided, however, that the Company shall not distribute Distributed Property to either the holders of the Common Stock or the Preferred Stock to the extent such distribution would be prohibited by any provision of any Debt Document. If the Board of Directors determines the fair market value of any distribution for purposes of this 24.3(i) by reference to the actual or when issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock for purposes of calculating SP<sub>0</sub> in the formula in this 24.3(i).

(ii) With respect to an adjustment pursuant to this 24.3 where there has been a payment of a dividend or other distribution on the Common Stock consisting of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a “Spin-Off”), the Conversion Rate in effect immediately before the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

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where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off;
- CR<sub>1</sub> = the new Conversion Rate in effect from and after the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off;
- FMV<sub>0</sub> = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off; and
- MP<sub>0</sub> = the average Closing Price of the Common Stock over the 10 consecutive Trading Day period calculated immediately following, and including, the effective date of the Spin-Off.

Such adjustment shall occur on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off.

For purposes of this 24.1, 24.2 and 24.3 hereof, any dividend or distribution to which this 24.3 is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which 24.1 or 24.2 hereof applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants to which 24.1 or 24.2 applies (and any Conversion Rate adjustment required by this 24.3 with respect to such dividend or distribution shall then be made), immediately followed by (2) a dividend or distribution of such shares of Common Stock or such options, rights or warrants to which 24.1 or 24.2 applies (and any further Conversion Rate adjustment required by 24.1 and 24.2 with respect to such dividend or distribution shall then be made), except (A) all references to the “Record Date” in 24.1 and 24.2 hereof shall be deemed to refer to the Record Date of such dividend or distribution and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Close of Business on the Record Date or the Close of Business on the effective date” within the meaning of 24.1.

If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, distribute options, rights or warrants to all or substantially all holders of Common Stock entitling the holders thereof to subscribe for, purchase or convert into shares of Capital Stock (either initially or under certain circumstances), which options, rights or warrants, until the occurrence of a specified event or events (“Trigger Event”): (x) are deemed to be transferred with such shares of Common Stock; (y) are not exercisable; and (z) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this 24.3, (and no adjustment to the Conversion Rate under this 24.3 shall be required) until the

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occurrence of the earliest Trigger Event and a distribution or deemed distribution under the terms of such options, rights or warrants at which time an appropriate adjustment (if any is required) to the Conversion Rate shall be made in the same manner as provided for in this 24.3. If any such options, rights or warrants are subject to events, upon the occurrence of which such options, rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new options, rights or warrants for purposes of this 24.3 (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of options, rights or warrants (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate in this 24.3 was made, (1) in the case of any such options, rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a distribution pursuant to this 24.3, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such options, rights or warrants (assuming such holder had retained such options, rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such options, rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such options, rights or warrants had not been issued.

24.4 If the Company makes a payment in respect of a tender or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the last reported sale prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day after the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR<sub>1</sub> = the new Conversion Rate effect immediately after the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

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- AC = the aggregate value of all cash and any other consideration (as determined by the Company in good faith and in a commercially reasonable manner) paid or payable for shares of the Common Stock purchased in such tender or exchange offer;
- OS<sub>0</sub> = the number of shares of the Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);
- OS<sub>1</sub> = the number of shares of the Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and
- SP<sub>1</sub> = the average of the last reported sale prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

24.5 The Company may make increases in the Conversion Rate, in addition to any other increases required by this 24, if the Board of Directors (by action of a majority of the directors excluding the Series A Preferred Directors (“Independent Majority”)) deems it advisable and necessary to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of options, rights or warrants for Common Stock) or from any event treated as such for income tax purposes or for any other reason; provided, however, that if there is a Series A Preferred Director on the Board of Directors at such time, the Company may not take such action without the approval of the Series A Preferred Directors, which approval may only be withheld if the Series A Preferred Directors reasonably determine that such action is likely to result in a material increase in U.S. federal income tax or withholding tax to holders of Series A Preferred Stock. If the Company takes any action affecting the Common Stock, other than an action described in Sections 24.1 through 24.4, which upon a determination by the Board of Directors by action of an Independent Majority, such determination intended to be a “fact” for purposes of Section 151(a) of the General Corporation Law of the State of Delaware, would materially adversely affect the conversion rights (including the value thereof) of the holders of the Series A Preferred Stock, the Conversion Rate shall be increased, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Directors by action of an Independent Majority determines in good faith to be equitable in the circumstances.

## 25. Series A Preferred Directors.

25.1 **Series A Preferred Directors.** Each Person appointed or elected to the Board of Directors by the holders of the Series A Preferred Stock is referred to herein as a “Series A

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Preferred Director” and, collectively, the “Series A Preferred Directors.” The initial Series A Preferred Directors shall be [·] and [·], with each of them to serve until at least the 2018 annual meeting of the Company’s stockholders or such individual’s earlier resignation, death or removal.

## 25.2 Election; Removal; Replacement; Number.

(a) The holders of Series A Preferred Stock, voting separately as a class, shall be entitled at each annual meeting of the stockholders of the Company or at any special meeting called for the purpose of electing directors to elect a number of Series A Preferred Directors as set forth in this 2525.2. The Series A Preferred Directors shall not be subject to the classified board of directors provisions of Article VI of the Certificate of Incorporation nor classified into Class I, Class II or Class III. The initial Series A Preferred Directors, designated by the Investor pursuant to 2525.1, shall take office effective as of the Original Issuance Date. Each Series A Preferred Director appointed or elected to the Board of Directors shall continue to hold office until the next annual meeting of the stockholders of the Company and until his or her successor is elected and qualified in accordance with this 2525.2 and the Bylaws. A majority of the outstanding shares of the Series A Preferred Stock, voting as a single class, at a meeting called for such purpose (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting) shall have the sole right to remove a Series A Preferred Director. Any vacancy created by the removal, resignation or death of a Series A Preferred Director shall solely be filled by a majority of the outstanding shares of the Series A Preferred Stock, voting as a single class, at a meeting called for such purpose (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting).

(b) The holders of a majority of the Series A Preferred Stock, voting separately as a class, shall be entitled at each annual meeting of the stockholders of the Company or at any special meeting called for the purpose of electing directors to (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting): (A) to nominate and elect two (2) members of the Board of Directors for so long as the Preferred Percentage is equal to or greater than 10%; and (B) to nominate and elect one (1) Series A Preferred Director for so long as the Preferred Percentage is equal to or greater than 5% but less than 10%. For the avoidance of doubt, upon the Preferred Percentage becoming less than 5%, the holders of the Series A Preferred Stock shall not be entitled to elect any members of the Board of Directors.

(c) In accordance with the provisions of this 2525.2, at each meeting of the Company's stockholders at which the election of directors is to be considered, the Board of Directors shall nominate the Series A Preferred Director(s) designated by the holders of a majority of the Series A Preferred Stock for election to the Board of Directors by the holders of the Series A Preferred Stock, subject to the terms and conditions of the Investor Rights Agreement.

**25.3 Committees.** Without prejudice to the rights of the Investor pursuant to the Investor Rights Agreement, after the date hereof, and subject to applicable law and the listing standards of the Nasdaq Global Select Market (or, if the Common Stock is not traded on Nasdaq Global Select Market, the principal national securities exchange or market on which the Common Stock

is listed or admitted to trading (including any over-the-counter market)), the Series A Preferred Directors shall be offered the opportunity to, at the Investor's option, either sit on each regular committee of the Board of Directors in relative proportion (if a fraction, rounded up to the next whole number of directors) to the number of Series A Preferred Directors on the Board of Directors or attend (but not vote) at the meetings of such committee as an observer. If a Series A Preferred Director fails to satisfy the applicable qualifications under law or stock exchange listing standard to sit on any committee of the Board of Directors, then the Board of Directors shall offer such Series A Preferred Director the opportunity to attend (but not vote) at the meetings of such committee as an observer.

**25.4 Compensation.** Each of the Series A Preferred Directors shall be entitled to receive similar compensation, benefits, reimbursement (including of reasonable travel expenses), indemnification and insurance coverage for their service as directors as the other outside directors of the Company. For so long as the Company maintains directors and officers liability insurance, the Company shall include each Series A Preferred Director as an "insured" for all purposes under such insurance policy for so long as such Series A Preferred Director is a director of the Company and for the same period as for other former directors of the Company when such Series A Preferred Director ceases to be a director of the Company.

## **26. Investor Rights.**

**26.1 Investor Rights as to Particular Matters.** In addition to any vote or consent of stockholders of the Company required by applicable law or by the Certificate of Incorporation, for so long as the holders of the Series A Preferred Stock have a right to elect a director pursuant to 25.2, the Company shall not, and shall not permit any of its Subsidiaries to, take any of the actions described in clauses (1) through (9) below without the prior written consent of the Investor:

### **(a) Dividends, Repurchase and Redemption.**

1. The declaration or payment of any dividend or distribution on the Common Stock, other Junior Stock or Parity Stock (other than (i) a dividend payable solely in Junior Stock and (ii) dividends or distributions paid exclusively in cash to the extent that the Series A Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with 21.1) if, at the time of such declaration, payment or distribution, dividends on the Series A Preferred Stock have not been paid in full in cash; or

2. the purchase, redemption or other acquisition for consideration by the Company, directly or indirectly, of any Common Stock, other Junior Stock or Parity Stock (except as necessary to effect (1) a reclassification of Junior Stock for or into other Junior Stock, (2) a reclassification of Parity Stock for or into other Parity Stock with the same or lesser aggregate liquidation preference, (3) a reclassification of Parity Stock into Junior Stock, (4) the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, (5) the exchange or conversion of one share of Parity Stock for or into another share of Parity Stock with the same or lesser per share liquidation amount or (6) the exchange or conversion of one share of Parity Stock into Junior Stock), in each case if, at the time of such purchase, redemption or other acquisition, dividends on the Series A Preferred Stock have not been paid in full in cash.

**(b) Amendment of Series A Preferred Stock.** The amendment, alteration, modification or repeal (whether by merger, consolidation, by operation of law or otherwise) of any provisions of the Certificate of Incorporation (including this Certificate of Designations) or Bylaws in any manner that adversely affects the rights, preferences, privileges or voting powers of the Series A Preferred Stock or any holder thereof.

**(c) Authorizations and Reclassifications.** Any amendment or alteration (whether by merger, consolidation, operation of law or otherwise) of the Certificate of Incorporation (including this Certificate of Designations) or any provision thereof in any manner that would, or the undertaking of any other



action to, authorize, create, split, classify, or increase the number of authorized or issued shares of, or any securities convertible into shares of, or reclassify any security into, any Junior Stock, Parity Stock (including additional shares of the Series A Preferred Stock other than shares of the Series A Preferred Stock issued as PIK Dividends) or Capital Stock that would rank senior to the Series A Preferred Stock.

(d) **Issuances.** Any amendment or alteration (whether by merger, consolidation, operation of law or otherwise) of the Certificate of Incorporation (including this Certificate of Designations) or any provision thereof in any manner that would authorize or result in the issuance of, or the undertaking of any other action to authorize or issue, Parity Stock (including additional shares of the Series A Preferred Stock other than shares of the Series A Preferred Stock issued as PIK Dividends) or Capital Stock that would rank senior to the Series A Preferred Stock.

(e) **Changes in the Size of the Board.** (A) The amendment, alteration, modification or repeal (whether by merger, consolidation, by operation of law or otherwise) of any provisions of the Certificate of Incorporation (including this Certificate of Designations) or Bylaws that increases or decreases the size of the Board of Directors after the Original Issuance Date or (B) the authorization or adoption of any resolution that would have the effect of increasing or decreasing the number of directors constituting the Board of Directors

(f) **Nominating Committee and Related Changes.** Any (A) amendment, alteration, modification or repeal (whether by merger, consolidation, by operation of law or otherwise) of any provisions of (i) the charter of the Nominating Committee (and any related organizational documents) or (ii) the Company's corporate governance guidelines (or similar document) addressing any matters concerning the Nominating Committee or (B) increase or decrease in the size of the Nominating Committee.

(g) **2018 Budget.** Approval of the Company's budget for the fiscal-year 2018.

(h) **Bankruptcy.** Any voluntary petition under any applicable federal or state bankruptcy or insolvency law effected by the Company or any Subsidiary of the Company.

(i) **Strategy.** Any change in the principal business of the Company or its Subsidiaries, taken as a whole, or the entry into any line of business (whether by merger, consolidation, acquisition of stock or assets or otherwise) outside of its existing line of businesses by the Company or any of its Subsidiaries, or any agreement or understanding to do any of the foregoing.

## 26.2 Additional Investor Rights as to Particular Matters.

(a) **EBITDA Non-Compliance.** In addition to any vote or consent of stockholders of the Company required by applicable law or by the Certificate of Incorporation, for so long as the holders of the Series A Preferred Stock have a right to elect a director pursuant to Section 8(b), if the Company is in EBITDA Non-Compliance, with respect to any action specified in clauses (A) through (C) below, the Company shall not, and shall not permit any of its Subsidiaries to, take, agree or otherwise commit to take any of the following actions without the prior written consent of the Investor:

3. **Incurrence of Indebtedness.** The incurrence of any indebtedness by the Company or its Subsidiaries pursuant to any Debt Document in an aggregate principal amount in excess of ten million dollars (\$10,000,000) (with "principal amount" for purposes of this definition to include undrawn committed or available amounts) or the entry into, modification, amendment or renewal by the Company or its Subsidiaries of any Debt Document in respect of indebtedness in an aggregate principal amount in excess of ten million dollars (\$10,000,000) (with "principal amount" for purposes of this definition to include undrawn committed or available amounts).

4. **Business Combinations and Other Transactions.** Entry into or consummation of (i) any Business Combination, joint venture or corporate reorganization by the Company or any of its Subsidiaries or (ii) the purchase, sale, lease, encumbrance, license or other transfer, acquisition or disposition of any material assets, securities, properties, interests or businesses of the Company or any Subsidiary, in each case of clause (i) or (ii), where the fair market value or purchase price exceeds five million dollars (\$5,000,000) individually or ten million dollars (\$10,000,000) in the aggregate in a fiscal year.

5. **Capital Expenditures.** Authorize, or make any commitment with respect to, capital expenditures of the Company and its Subsidiaries in excess of twenty-five million dollars (\$25,000,000) in the aggregate in a fiscal year.

For purposes of this Certificate of Designations, the Company shall be in "EBITDA Non-Compliance" with respect to any action: (i) in all cases prior to the public announcement of the completion of the Financial Restatement (as defined in the Securities Purchase Agreement); and (ii) following the later of December 31, 2017 and the public announcement of the completion of the Financial Restatement (as defined in the Securities Purchase Agreement), if either (x) the Company generated less than seventy-five million dollars (\$75,000,000) of LTM EBITDA for the twelve-month period ended on the last day of the most recently completed fiscal quarter of the Company prior to the taking of such action or (y) the Leverage Ratio as of the last day of the most recently completed fiscal quarter of the Company prior to the taking of such action (the "Applicable Quarter") is equal to or greater than the level shown in the table below for the Applicable Quarter:

Quarter Ended	Level
December 31, 2017	5.5:1
March 31, 2018	5.25:1
June 30, 2018	5:1
September 30, 2018	4.75:1
December 31, 2018	4.5:1
March 31, 2019 and all periods thereafter	4:1

(b) **Pro Forma Leverage Ratio Test For Certain Actions.** In addition to any vote or consent of the stockholders of the Company required by law or by the Certificate of Incorporation and any consent of the Investor required pursuant to 26(b)(a), for so long as the holders of the Series A Preferred Stock have a right to elect a director under 25.2, the Company shall not, and shall not permit any of its Subsidiaries to, take, agree or otherwise commit to take any

action specified in 26(b)3 or 26(b)4 without the prior written consent of the Investor if the Pro Forma Leverage Ratio in respect of such action is greater than 4:1.

(c) **Determination of LTM EBITDA and Leverage Ratio.** Promptly following the end of each fiscal quarter of the Company, the Audit Committee of the Board of Directors shall, in good faith, determine the amount of LTM EBITDA of the Company for the twelve-month period ended on the last day of such fiscal quarter (such amount, which in all cases (A) shall exclude extraordinary items, minority interests, and divested or discontinued operations, and non-traditional revenue and (B) shall not be adjusted for cost reduction actions effected after the Original Issue Date, as so determined by the Audit Committee of the Board, “LTM EBITDA” for such fiscal quarter) and the Leverage Ratio Calculation as of the end of such fiscal quarter (as so determined by the Audit Committee, the “Leverage Ratio”), and promptly thereupon the Company shall notify the Investor in writing of such determination and calculations

(d) **Annual Budget.** Following the Investor’s approval of the budget for the fiscal-year 2018, any subsequent annual budget will be reviewed and discussed with the Investor at least 30 days prior to approval by the Company and/or the Board of Directors.

26.3 **Changes after Provision for Redemption.** No vote or consent of the holders of Series A Preferred Stock shall be required pursuant to 26 if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such 26, all outstanding shares of Series A Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been irrevocably deposited in trust for redemption for the sole benefit of the holders of the Series A Preferred Stock, in each case, pursuant to 22 above.

## 27. Voting.

27.1 The holders of shares of Series A Preferred Stock shall be entitled to notice of any meeting of the stockholders of the Company in accordance with the applicable provisions of the Bylaws. Each holder of Series A Preferred Stock will have one vote per share on any matter on which holders of Series A Preferred Stock are entitled to vote separately as a class, whether at a

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meeting or by written consent. The holders of Series A Preferred Stock may take action or consent to any action with respect to such rights without a meeting by delivering a consent in writing or electronics transmission of the holders of the Series A Preferred Stock entitled to cast not less than the minimum number of votes that would be necessary to authorize, take or consent to such action at a meeting of stockholders.

27.2 In addition to any vote (or action taken by written consent) of the holders of the shares of Series A Preferred Stock as a separate class provided for herein or by the General Corporation Law of the State of Delaware, the holders of shares of the Series A Preferred Stock shall be entitled to vote with the holders of shares of Common Stock (and any other class or series that may similarly be entitled to vote with the holders of Common Stock) on all matters submitted to a vote or to the consent of the stockholders of the Company (including the election of directors) as one class. In any such vote or action, each holder of shares of Series A Preferred Stock shall be entitled to vote, for each share of Series A Preferred Stock, a number of votes equal to the Conversion Rate; provided, however, that, with respect to any vote taken prior to the receipt of Stockholder Approval, if the sum, without duplication, of (A) the aggregate voting power of the Conversion Shares held by the Capped Holders at the record date of determination of the stockholders entitled to vote on the applicable matter or, if no such record date is established, at the date such vote is taken, plus (B) the aggregate voting power of the shares of Series A Preferred Stock held by the Capped Holders as of such record date or such time, as applicable, would exceed 19.99% of the total voting power (without regard to this proviso) of the Voting Stock outstanding at such date or time, then, with respect to such shares, the Capped Holders shall be entitled to cast a number of votes equal to 19.99 % of such total voting power (after giving effect to this proviso) (the “Voting Cap”).

27.3 **Record Holders.** To the fullest extent permitted by applicable law, the Company may deem and treat the record holder of any share of the Series A Preferred Stock as the true and lawful owner thereof for all purposes, and the Company shall not be affected by any notice to the contrary.

## 28. Notices.

28.1 **General.** All notices or communications in respect of the Series A Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law or regulation. Notwithstanding the foregoing, if the Series A Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of the Series A Preferred Stock in any manner permitted by such facility.

28.2 **Notice of Certain Events.** The Company shall, to the extent not included in the Exchange Act reports of the Company, provide reasonable written notice to each holder of the Series A Preferred Stock of any event that has resulted in (i) a Fundamental Change and (ii) an event the occurrence of which would result in an adjustment to the Conversion Rate, including the then applicable Conversion Rate.

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29. **Replacement Certificates.** The Company shall replace any mutilated certificate at the holder’s expense upon surrender of that certificate to the Company. The Company shall replace certificates that become destroyed, stolen or lost at the holder’s expense upon delivery to the Company of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Company.

30. **Other Rights.** The shares of Series A Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation. Anything in this Certificate of Designations notwithstanding, upon receipt of the Stockholder Approval, the redemption, conversion and voting limitations applicable to the Capped Holders shall cease to be of any further force and effect and the Capped Holders shall permanently cease to be subject to any such limitations (including the limitations of the application of the Conversion Cap or Voting Cap).

31. **Further Assurances.** The Company shall take such actions as are reasonably required in order for the Company to satisfy its obligations under this Certificate of Designations, including, without limitation, using reasonable best efforts in obtaining the approval of the holders of any class or series of Capital Stock, reflecting the increase in the outstanding shares of the Series A Preferred Stock as a result of the PIK Dividends on the stock transfer

books of the Company or making any filings, in each case as required pursuant to applicable law or the listing requirements (if any) of any national securities exchange on which any class or series of Capital Stock is then listed or traded. The Company further agrees to cooperate with the holders of Series A Preferred in the making of any filings under applicable law that are to be made by the Company or any such holder in connection with any PIK Dividends or the exercise of any such holder's rights hereunder.

**32. Amendment.** This Certificate of Designations may only be altered, amended, or repealed by the affirmative vote of a majority of the whole Board of Directors and holders of a majority of the outstanding shares of the Series A Preferred Stock, voting as a single class.

**33. Waiver.** Any provision in this Certificate of Designations to the contrary notwithstanding, any provision contained herein and any right of the holders of Series A Preferred Stock granted hereunder may be waived as to all shares of Series A Preferred Stock (and the holders thereof) upon the written consent of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

**34. Severability.** If any term of the Series A Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be duly executed and acknowledged by its undersigned duly authorized officer this [·] of [·].

**SYNCHRONOSS TECHNOLOGIES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

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**Schedule 6.9**

Ireland  
Germany, but only if the IL Trigger Event is the IL Termination or the Investor shall have waived the condition set forth in Section 6.14 of the Agreement.

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**FORM OF CERTIFICATE OF DESIGNATIONS OF  
SERIES A CONVERTIBLE PARTICIPATING  
PERPETUAL PREFERRED STOCK,  
PAR VALUE \$0.0001 PER SHARE, OF  
SYNCHRONOSS TECHNOLOGIES, INC.**

Pursuant to Sections 151 and 103 of the  
General Corporation Law of the State of Delaware

The undersigned, Chief Executive Officer, does hereby certify that:

1. The undersigned is the Chief Executive Officer of Synchronoss Technologies, Inc., a Delaware corporation (the "Company");
2. The Company is authorized to issue ten million (10,000,000) shares of preferred stock, par value \$0.0001 per share ("Preferred Stock"), none of which has been issued; and
3. The following resolutions were duly adopted by the board of directors of the Company (the "Board of Directors");

**WHEREAS**, the Company's Restated Certificate of Incorporation, as may be amended, modified or supplemented from time to time (the "Certificate of Incorporation"), authorizes the Board of Directors to issue, without stockholder approval, Preferred Stock by filing a certificate pursuant to the laws of the State of Delaware to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof;

**WHEREAS**, it is the desire of the Board of Directors to fix the designation, powers, preferences and rights of a new series of the Preferred Stock, which shall consist of eight hundred thousand (800,000) shares of Preferred Stock that the Company has the authority to issue as Series A Convertible Participating Perpetual Preferred Stock, as follows.

**NOW, THEREFORE, BE IT RESOLVED**, that pursuant to the authority vested in the Board of Directors by Article IV of the Certificate of Incorporation and Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors does hereby designate, create, authorize and provide for the issue of a series of eight hundred thousand (800,000) shares of Preferred Stock, par value \$0.0001 per share, having the powers, preferences and rights, and qualifications, limitations and restrictions that are set forth in this resolution of the Board of Directors pursuant to authority expressly vested in it by the provisions of the Certificate of Incorporation and hereby constituting an amendment to the Certificate of Incorporation as follows:

**Section 1 Designation.** The designation of the series of Preferred Stock is "Series A Convertible Participating Perpetual Preferred Stock," par value \$0.0001 per share (the "Series A Preferred Stock"). Each share of the Series A Preferred Stock shall be identical in all respects to

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every other share of the Series A Preferred Stock. The Series A Preferred Stock shall be perpetual, unless redeemed or converted in accordance with this Certificate of Designations.

**Section 2 Number of Shares.** The authorized number of shares of the Series A Preferred Stock is 410,000. Series A Preferred Stock that is redeemed, purchased or otherwise acquired by the Company, or converted into another class or series of Capital Stock, shall not be reissued as Series A Preferred Stock and the Company shall take such actions as are necessary to cause such acquired or converted shares to resume the status of authorized but unissued shares of Preferred Stock.

**Section 3 Defined Terms and Rules of Construction.**

**(a) Definitions.** As used herein with respect to the Series A Preferred Stock:

"Accrued Amount" shall mean, with respect to any share of the Series A Preferred Stock, the sum of the Liquidation Preference and the Accrued Dividends with respect to such share, in each case, as of the applicable date of redemption.

"Accrued Dividends" shall mean, as of any date, with respect to any share of the Series A Preferred Stock, all Preferred Dividends that have accrued on such share pursuant to Section 4(b), whether or not declared, but that have not, as of such date, been paid in cash or in kind.

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Quarter" has the meaning ascribed to it in Section 9(b).

"Beneficially Own" shall mean "beneficially own" as defined in Rule 13d-3 under the Exchange Act.

"Board of Directors" has the meaning ascribed to it in the Recitals above.

"Business Day" shall mean a day except a Saturday, a Sunday or other day on which banks in the City of New York are authorized or required by applicable law to be closed.

“Bylaws” shall mean the Amended and Restated Bylaws of the Company in effect on the date hereof, as they may be amended from time to time.

“Capital Stock” shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (in each case however designated) stock issued by the Company.

“Capped Holders” has the meaning ascribed to it in Section 5(c)(1).

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“Certificate of Designations” shall mean this Certificate of Designations relating to the Series A Preferred Stock, as it may be amended from time to time.

“Certificate of Incorporation” has the meaning ascribed to it in the Recitals above.

“Change of Control” shall mean the occurrence of any of the following:

(1) any “person” or “group” (within the meaning of Section 13(d)(3) and 14(d)(2) of the Exchange Act) is or becomes the Beneficial Owner of more than 50% of the total voting power of the Voting Stock; or

(2) Consummation of a reorganization, reclassification, merger, tender offer, statutory share exchange or consolidation or similar transaction involving the Company or any of its Subsidiaries, a sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its Subsidiaries (each, a “Business Combination”), in each case unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the shares of Voting Stock immediately prior to such Business Combination beneficially own, immediately following the Business Combination and any related transactions, more than 50% of the outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) and the combined voting power of the outstanding voting securities entitled to vote generally in the election of directors (or, for a non-corporate entity, equivalent governing body), as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more Subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Voting Stock, as the case may be; and (B) no Person beneficially owns 50% or more of the outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) of the entity resulting from such Business Combination or of the combined voting power of the outstanding voting securities of such entity, except to the extent that such ownership existed prior to the Business Combination.

“Close of Business” shall mean 5:00 p.m., Eastern Time, on any Business Day.

“Closing Price” shall mean the per share closing price of the Common Stock, or if no closing sale price is reported, the last reported sale price on the applicable Trading Day on the Nasdaq Global Select Market (or, if the Common Stock is not traded on Nasdaq Global Select Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)).

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

“Commission” shall mean the U.S. Securities and Exchange Commission, including the staff thereof.

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

“Company” has the meaning ascribed to it in the Recitals above.

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“Company Redemption Date” has the meaning ascribed to it in Section 5(d)(2).

“Company Redemption Notice” has the meaning ascribed to it in Section 5(d)(2).

“Company Redemption Price” has the meaning set forth in Section 5(d)(1).

“Conversion Cap” shall mean, at the time of determination, 19.9% of the issued and outstanding shares of Voting Stock on an as converted basis (for the avoidance of doubt, after giving effect to any issuance with respect to which the Conversion Cap is being calculated).

“Conversion Cutback” has the meaning set forth in Section 5(c).

“Conversion Price” shall mean, with respect to a share of Series A Preferred Stock, a dollar amount equal to the quotient of (1) the sum of (A) the Liquidation Preference with respect to such share as of the conversion date and (B) the Accrued Dividends from and including the immediately preceding Dividend Payment Date to but excluding the conversion date and (2) \$1,000.

“Conversion Rate” shall mean 55.5556, subject to adjustment as set forth in Section 7.

“Conversion Shares” shall mean shares of Common Stock issued to a Capped Holder upon the conversion of shares of Series A Preferred Stock.

“Current Market Price” shall mean the average Closing Price for the ten (10) consecutive Trading Days immediately preceding, but not including, the date as of which the Current Market Price is to be determined, adjusted to take into account the occurrence during such period of any event described in Section 7.

“Debt Document” shall mean each agreement in respect of indebtedness for borrowed money that is entered into by the Company or any of its Subsidiaries from time to time and as may be amended, supplemented, restated, renewed, replaced, refinanced or otherwise modified from time to time. For the avoidance of doubt, (1) obligations under multiple agreements may not be aggregated for purposes of satisfying the definition of Debt Document; (2) mortgages, real

estate leases, capital lease obligations, purchase money agreements, sale-leaseback transactions, equipment financing, inventory financing, letters of credit and receivables financing shall be deemed to be “Debt Documents” for all purposes hereunder; and (3) interest rate swaps, currency or commodity hedges and other derivative or similar instruments, measured on the basis of liability to the Company determined as of the date of the most recent quarterly or annual balance sheet of the Company, and not based on notional amount, shall be deemed to be “Debt Documents” for all purposes hereunder.

“Distributed Property” shall have the meaning ascribed to it in Section 7(c).

“Dividend Payment Date” shall mean January 1, April 1, July 1 and October 1 of each year, commencing on January 1, 2018; provided that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series A Preferred Stock on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day.

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“Dividend Period” shall mean the period commencing on and including a Dividend Payment Date and shall end on and include the day immediately preceding the next Dividend Payment Date; provided that the initial Dividend Period shall commence on and include the Original Issue Date and shall end on and include the day immediately preceding the first Dividend Payment Date.

“Dividend Rate” shall mean 14.5% per annum.

“EBITDA Non-Compliance” shall have the meaning ascribed to it at the end of Section 9(b).

“Equity-Linked Securities” shall mean any security or instrument convertible into, exercisable or exchangeable for Capital Stock of the Company.

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

“Fundamental Change” shall mean the occurrence of any of the following: (1) a Change of Control or (2) approval or adoption by the stockholders of the Company of a liquidation or dissolution of the Company.

“Fundamental Change Notice” shall have the meaning ascribed to it in Section 5(b)(2).

“Fundamental Change Price” shall have the meaning ascribed to it in Section 5(b)(1).

“Fundamental Change Purchase Date” shall have the meaning ascribed to it in Section 5(b)(2).

“Independent Majority” shall have the meaning ascribed to it in Section 7(e).

“Investor” shall mean Silver Private Holdings I, LLC, a Delaware limited liability company.

“Investor Rights Agreement” shall mean the Investor Rights Agreement, dated as of [·], [·], as may be amended from time to time, by and between the Company and the Investor.

“Junior Stock” shall mean the Common Stock and any other class or series of Capital Stock that ranks junior to the Series A Preferred Stock (1) as to the payment of dividends and (2) as to the distribution of assets on any liquidation, dissolution or winding up of the Company.

“Leverage Ratio” shall have the meaning set forth in Section 9(b)(3).

“Leverage Ratio Calculation” as of the last day of a specified fiscal quarter of the Company shall mean the ratio of (1) the total amount of consolidated indebtedness of the Company outstanding as of the last day of such fiscal quarter to (2) LTM EBITDA for the twelve-month period ended on the last day of such fiscal quarter, it being understood that in all cases the total amount of consolidated indebtedness of the Company shall include the amount of the aggregate Liquidation Preference and Accrued Dividends with respect to all shares of Series A Preferred Stock outstanding as of the last day of such fiscal quarter.

“Liquidating Distribution” shall have the meaning ascribed to it in Section 7(c).

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“Liquidation Preference” shall initially mean \$1,000 per share of Series A Preferred Stock; provided, however, that to the extent that the Company does not declare and pay a dividend in cash or declare and pay a PIK Dividend, in either case, on a Dividend Payment Date pursuant to Section 4(b) and (c), on the applicable Dividend Payment Date, an amount equal to the Net Preferred Dividend shall be added to the Liquidation Preference of such share as of such applicable Dividend Payment Date.

“LTM EBITDA” shall have the meaning ascribed to it in Section 9(b)(3).

“Make-Whole Redemption Date” has the meaning ascribed to it in Section 5(c)(2).

“Make-Whole Redemption Notice” has the meaning ascribed to it in Section 5(c)(2).

“Make-Whole Redemption Price” has the meaning ascribed to it in Section 5(c)(1).

“Net Preferred Dividend” has the meaning ascribed to it in Section 4(b).

“Nominating Committee” means the Nominating and Corporate Governance Committee of the Board of Directors.

“Open of Business” shall mean 9:00 a.m., Eastern Time, on any Business Day.

“Optional Redemption Date” has the meaning ascribed to it in Section 5(a)(1).

“Original Issue Date” shall mean the date on which the Investor and the Company consummate the purchase and sale of 185,000 shares of the Series A Preferred Stock pursuant to the Securities Purchase Agreement.

“Parity Stock” shall mean any class or series of Capital Stock (other than the Series A Preferred Stock) that ranks equally with the Series A Preferred Stock both (1) in the priority of payment of dividends and (2) in the distribution of assets upon any liquidation, dissolution or winding up of the Company (in each case, without regard to whether dividends accrue cumulatively or non-cumulatively).

“Per Share Amount” shall have the meaning ascribed to it in Section 6(a).

“Person” shall mean an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, joint venture, other entity or group (as defined in the Exchange Act), including a governmental authority.

“PIK Dividend” has the meaning ascribed to in Section 4(c).

“Preferred Dividend” has the meaning ascribed to it in Section 4(b).

“Preferred Percentage” shall mean, at any time of determination, the quotient, expressed as a percentage, of (1) the number of issued and outstanding shares of Voting Stock on an as converted basis (without regard to any Conversion Cutback pursuant to Section 5(c)(1) or Section 5(d)(1) or any limitation on conversion pursuant to Section 6(d)) held by holders of

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shares of Series A Preferred Stock at such time divided by (2) the total number of issued and outstanding shares of Voting Stock, on an as converted basis (without regard to any Conversion Cutback pursuant to Section 5(c)(1) or Section 5(d)(1) or any limitation on conversion pursuant to Section 6(d)), at such time.

“Preferred Stock” has the meaning ascribed to it in the Recitals above.

“Pre-Redemption Conversion Election” has the meaning ascribed to it in Section 5(c)(1).

“Pro Forma Leverage Ratio” in respect of a specified action shall mean the Leverage Ratio giving pro forma effect to any indebtedness that would be incurred or assumed in connection with such action. For purposes of this definition, “giving pro forma effect” shall mean taking into account: (1) the incurrence of any indebtedness by the Company or its Subsidiaries (or, in the case of Section 9(b)(1)(B), the Person or business involved in the relevant transaction with the Company) that could reasonably be expected to be required to effect such action (for this purpose calculating the total amount of consolidated indebtedness outstanding as if the Company had incurred such indebtedness as of the last day of the most recently completed fiscal quarter of the Company); and (2) with respect to any action described in Section 9(b)(1)(B), in addition to the adjustment set forth in clause (1) above, (x) the total amount of consolidated indebtedness of the Person or business involved in the relevant transaction with the Company (for this purpose calculating the total amount of consolidated indebtedness outstanding by adding such Person’s or business’ total consolidated indebtedness outstanding as of the last day of the most recently completed fiscal quarter of the Company to the Company’s total consolidated indebtedness outstanding as of the last day of the most recently completed fiscal quarter of the Company), and (y) the total amount of Acquisition LTM EBITDA, in the case of this clause (y) to be taken into account by adding the Acquisition LTM EBITDA as of the last day of the most recently completed fiscal quarter of the Company to LTM EBITDA (of the Company) as of the last day of the most recently completed fiscal quarter of the Company when calculating the denominator of the Pro Forma Leverage Ratio (where Acquisition LTM EBITDA means LTM EBITDA of the Person or business involved in the relevant transaction with the Company, substituting such Person for the Company in the definition of LTM EBITDA (and otherwise determined as set forth therein)).

“Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract, this Certificate of Designations or otherwise).

“Redemption Date” shall mean the date on which any holder elects to redeem all or any portion of its outstanding shares of Series A Preferred Stock pursuant to Section 5(a)(1).

“Redemption Notice” shall have the meaning ascribed to it in Section 5(a)(2).

“Redemption Price” shall have the meaning ascribed to it in Section 5(a)(1).

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“Redemption Right” shall have the meaning ascribed to it in Section 5(a)(1).

“Securities Purchase Agreement” shall mean the Securities Purchase Agreement, dated as of October 17, 2017, as may be amended from time to time, by and between the Company and the Investor.

“Series A Preferred Director” has the meaning ascribed to it in Section 8(a).

“Series A Preferred Stock” shall have the meaning ascribed to it in Section 1.

“Spin-Off” shall have the meaning ascribed to it in Section 7(c).

“Stockholder Approval” shall mean the requisite approval under the listing standards of the Nasdaq Stock Market, including, if applicable, Nasdaq Stock Market Rule 5635(b), by the stockholders of the Company of the transactions contemplated by the Securities Purchase Agreement, including the purchase and sale pursuant thereto of 185,000 shares of the Series A Preferred Stock having the rights and privileges set forth in this Certificate of Designations and the issuance thereof to the Investor.

“Subsidiary” of any Person shall mean any corporation, partnership, joint venture, limited liability company, trust or other form of legal entity of which (or in which) more than 50% of (1) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (2) the interest in the capital or profits of such partnership, joint venture or limited liability company or (3) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries.

“Thirty-Month Accrued Amount” shall mean, with respect to any share of Series A Preferred Stock, the sum of (1) the Liquidation Preference and (2) the product of (A) the aggregate amount of all Preferred Dividends that would have been paid in respect of an outstanding share of Series A Preferred Stock in each remaining Dividend Period from the Fundamental Change Purchase Date through the thirty-month (30) anniversary of the Original Issue Date assuming all such Preferred Dividends were paid in the form of PIK Dividends and (B) \$1,000.

“Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the Nasdaq Global Select Stock Market (or, if the Common Stock is not traded on Nasdaq Global Select Stock Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)).

“Trigger Event” shall have the meaning ascribed to it in Section 7(c).

“Voting Cap” shall have the meaning ascribed to it in Section 10(b).

“Voting Stock” shall mean Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard

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to any classification of directors) to elect one or more members of the Board of Directors (without regard to whether or not, at the relevant time, Capital Stock of any other class or classes (other than Common Stock) shall have or might have voting power by reason of the happening of any contingency).

**(b) Rules of Construction.** Unless the context otherwise requires: (1) a term has the meaning assigned to it herein; (2) an accounting term not otherwise defined herein has the meaning accorded to it in accordance with generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis; (3) words in the singular include the plural, and in the plural include the singular; (4) “or” is not exclusive; (5) “will” shall be interpreted to express a command; (6) “including” means including without limitation; (7) provisions apply to successive events and transactions; (8) references to any Section or clause refer to the corresponding Section or clause, respectively, of this Certificate of Designations; (9) any reference to a day or number of days, unless expressly referred to as a Business Day or Trading Day, shall mean the respective calendar day or number of calendar days; (10) references to sections of or rules under the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, and any term defined by reference to a section of or rule under the Exchange Act shall include Commission and judicial interpretations of such section or rule; (11) references to sections of the Code shall be deemed to include any substitute, replacement or successor sections as well as the rules and regulations promulgated thereunder from time to time; (12) headings are for convenience only; and (13) unless otherwise expressly provided in this Certificate of Designations, a reference to any specific agreement or other document shall be deemed a reference to such agreement or document as amended from time to time in accordance with the terms of such agreement or document.

#### **Section 4 Dividends.**

**(a) Participation with Dividends on Common Stock.** No dividend shall be declared or paid on the Common Stock during a Dividend Period unless such dividend is also declared or paid (as applicable) on the Series A Preferred Stock for such Dividend Period in an amount equal to (1) the Per Share Amount as of the Record Date for such dividend *multiplied* by (2) the amount per share distributed or to be distributed in respect of the Common Stock in connection with such dividend.

**(b) Dividend Rate on Series A Preferred Stock.** In addition to participation in dividends on Common Stock as set forth in Section 4(a), the holders of the Series A Preferred Stock shall be entitled to receive, on each share of Series A Preferred Stock and with respect to each Dividend Period, an amount (such amount, the “Net Preferred Dividend”) equal to the Dividend Rate *multiplied* by the Liquidation Preference per share of Series A Preferred Stock (the “Preferred Dividend”). If and to the extent that the Company does not pay the entire Net Preferred Dividend on each share of Series A Preferred Stock for a particular Dividend Period in accordance with Section 4(c) on the applicable Dividend Payment Date for such period, the unpaid portion of the Net Preferred Dividend shall be added to the Liquidation Preference in accordance with the definition thereof. Amounts payable at the Dividend Rate shall begin to accrue on a daily basis and be cumulative from and including the Original Issue Date, whether or not the Company has funds legally available for such dividends or such dividends are declared, shall compound on each Dividend Payment Date (i.e., no dividends shall accrue on other

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dividends unless and until the Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable in arrears on the first Dividend Payment Date after such Dividend Period. Preferred Dividends that are payable on the Series A Preferred Stock on any Dividend Payment Date shall be payable to holders of record of the Series A Preferred Stock as they appear on the stock register of the Company on the Record Date for such dividend, which shall be the date 15 days prior to the applicable Dividend Payment Date. Preferred Dividends payable at the Dividend Rate on the Series A Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve



30-day months. The amount of dividends payable at the Dividend Rate on the Series A Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month (i.e. during each Dividend Period, \$36.25 of Preferred Dividends shall accrue on each outstanding share of the Series A Preferred Stock, assuming no increase in the Liquidation Preference).

**(c) Payment of Dividends.** The Preferred Dividend shall be payable, at the Company's sole discretion, in kind in additional shares of Series A Preferred Stock (such shares, the "PIK Dividend") or in cash. If the Company elects to make a PIK Dividend, the number of shares of Series A Preferred Stock to be issued in payment of such PIK Dividend with respect to each outstanding share of Series A Preferred Stock shall be determined by dividing (1) the Net Preferred Dividend by (2) the Liquidation Preference (including any amounts added to the initial Liquidation Preference pursuant to the proviso in the definition of Liquidation Preference and Section 4(b)) per share of Series A Preferred Stock. Anything to the contrary in this Certificate of Designations notwithstanding, cash dividends shall be paid only to the extent (A) the Company has funds legally available for such payment, (B) there are no provisions in any of the Debt Documents prohibiting the payment of cash dividends on the Series A Preferred Stock in such amount on the applicable Dividend Payment Date, and (C) the Board of Directors, or an authorized committee thereof, declares such dividend payable. To the extent the Board of Directors desires to declare any cash dividend or other distribution in cash on the Common Stock during any Dividend Period that requires a corresponding cash dividend on the Series A Preferred Stock in accordance with Section 4(a), it may do so only to the extent that (i) the Company has funds legally available for the payment of such dividend or distribution in cash on all of the shares of Common Stock and Series A Preferred Stock then outstanding, (ii) there are no provisions in any of the Debt Documents prohibiting the payment of cash dividends on the Common Stock and/or Series A Preferred Stock in such amount on the applicable Dividend Payment Date and (iii) such cash dividend or distribution on the Common Stock and the Series A Preferred Stock shall be payable only on the applicable Dividend Payment Date for such Dividend Period.

**(d) Priority of Dividends.** The Series A Preferred Stock will rank, with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and redemption rights, senior to the Common Stock and each other class or series of Capital Stock now existing or hereafter authorized, classified or reclassified, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Series A Preferred Stock as to dividend rights, rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and redemption rights; provided, however, subject

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to Sections 4(a), (b) and (c), Section 7 and Section 8, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or an authorized committee thereof may be declared and paid on any Capital Stock, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment.

## **Section 5 Redemption.**

### **(a) Redemption Right.**

(1) At any time on and after the fifth (5<sup>th</sup>) anniversary of the Original Issue Date (the "Optional Redemption Date"), each holder shall have the right (the "Redemption Right") to require the Company to redeem for cash any or all of the shares of Series A Preferred Stock (including, for the avoidance of doubt, outstanding shares of Series A Preferred Stock paid to such holders as PIK Dividends) of such holder outstanding at a redemption price (the "Redemption Price") per share of Series A Preferred Stock, equal to the sum of (i) the Liquidation Preference per share of Series A Preferred Stock to be redeemed and (ii) any Accrued Dividends (up to and including the Redemption Date). In the event that any certificate for shares of Series A Preferred Stock shall be surrendered for partial redemption, the Company shall execute and deliver to or upon the written order of the holder of the certificate so surrendered a new certificate for the shares of Series A Preferred Stock not so redeemed. Shares of Series A Preferred Stock redeemed in accordance with this Section 5(a)(1), shall return to the status of and constitute authorized but unissued shares of Preferred Stock, without classification as to series until such shares are once more classified as a particular series by the Board of Directors pursuant to the provisions of the Certificate of Incorporation.

(2) Such holder shall deliver to the Company a written notice of such redemption (a "Redemption Notice") not less than fifteen (15) Business Days prior to the Redemption Date. The Redemption Notice must state the following: (A) the aggregate number of shares of Series A Preferred Stock to be redeemed; (B) the Redemption Date; (C) the Redemption Price; and (D) that Preferred Dividends on the shares to be redeemed will cease to accrue on such Redemption Date, provided that the Redemption Price shall have been paid in full on the Redemption Date.

(3) Subject to Section 5(a)(4), upon the Redemption Date, the Company shall pay the Redemption Price in respect of each share of Series A Preferred Stock to such holder by wire transfer of immediately available funds on the Redemption Date. The Company shall remain liable for the payment of the Redemption Price in respect of each share of Series A Preferred Stock and any Preferred Dividends with respect to the shares of Series A Preferred Stock to be redeemed to the extent such amounts are not promptly paid as provided herein.

(4) Solely in the event that the Company does not have the funds legally available for such redemption in cash on all of the shares of Common Stock and Series A Preferred Stock then outstanding, the Company shall, in lieu of paying such holder in cash, issue a senior unsecured note with a principal amount equal to the Redemption Price in respect of each share of Series A Preferred Stock of such holder, an interest rate equal to the Dividend Rate, a term to maturity of one year and such other terms as reasonably acceptable to the applicable holder.

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### **(b) Fundamental Change.**

(1) In connection with any Fundamental Change, each holder of the Series A Preferred Stock shall have the right to require the Company to repurchase all or any part of such holder's Series A Preferred Stock for cash at a price per share equal to the greatest of (A) the Accrued Amount (including Accrued Dividends up to and including the Fundamental Change Purchase Date), (B) the Thirty-Month Accrued Amount (including Accrued Dividends up to and including the Fundamental Change Purchase Date) and (C) the value of the Common Stock that such holder would be entitled to receive if such holder had converted a share of Series A Preferred Stock pursuant to Section 6(a) immediately prior to the date of the Fundamental Change (based on the Closing Price on such date and, if holders of Common Stock have the right to elect the form of consideration in connection with such Fundamental Change, on the same basis), without regard to any reduction pursuant to Section 6(d) (as applicable, the "Fundamental Change Price").

(2) On or before thirty (30) days prior to the date of any Fundamental Change, or in the event an executive officer of the Company is not aware of such Fundamental Change at least thirty (30) days prior to the effective date of the Fundamental Change, as soon as otherwise practicable (but in any event within two Business Days of an executive officer of the Company becoming aware of such Fundamental Change), the Company shall deliver to the holder a written notice of such Fundamental Change (the “Fundamental Change Notice”). Such Fundamental Change Notice must: (A) specify a date that the Company will pay the Fundamental Change Price in respect of each share of Series A Preferred Stock (which shall be no earlier than thirty (30) days nor later than sixty (60) days from the date notice is mailed, such date the “Fundamental Change Purchase Date”); (B) that the decision as to whether to effect a redemption in connection with a Fundamental Change Offer may be accepted by delivery, no later than five (5) Business Days prior to the date specified in clause (A); (C) the Fundamental Change Price, specifying the individual components thereof; (D) that any shares of Series A Preferred Stock not tendered for payment shall continue to be outstanding and the holder shall remain entitled to, among other things, the payment of the Preferred Dividends thereon and the ability to exercise their conversion rights thereto and the Conversion Price following such Fundamental Change; and (E) the circumstances and material facts regarding such Fundamental Change (and the Company shall not enter into any confidentiality agreement in connection with any potential Fundamental Change that restricts, in any manner, the Company’s ability to comply with its disclosure obligations to the holders of Series A Preferred Stock under this Section 5(b)).

(3) On the Fundamental Change Purchase Date, the Company shall pay to the applicable holder the Fundamental Change Price in respect of each share of Series A Preferred Stock to be repurchased as specified in such holder’s notice delivered to the Company by wire transfer of immediately available funds. The Company shall remain liable for the payment of the Fundamental Change Price in respect of each share of Series A Preferred Stock to the extent such amounts are not paid as provided herein. Notwithstanding the foregoing, in the event of a Fundamental Change on the basis of Section 5(b)(1)(C), the Company or the third party acquirer, as applicable, shall pay such holders the Fundamental Change Price concurrently with the payment to the holders of Common stock in connection with such Fundamental Change; provided that the Company (or any successor entity) shall remain liable for the payment of the Fundamental Change Price to the extent such amounts are not paid as provided herein.

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(4) On and after the Fundamental Change Purchase Date, shares of the Series A Preferred Stock repurchased, or to be repurchased, on such Fundamental Change Purchase Date shall no longer be deemed to be outstanding and all powers, designations, preferences and other rights of such holder as a holder of such shares (except the right to receive from the Company (or a third party acquirer, if applicable) the Fundamental Change Price in respect of each share of Series A Preferred Stock) shall cease and terminate with respect to such shares; provided, that in the event that any shares of Series A Preferred Stock are not repurchased due to a default in payment by the Company (or its successor) or because the Company (or its successor) is otherwise unable to or fails to pay the Fundamental Change Price in respect of each share of Series A Preferred Stock in full on the Fundamental Change Purchase Date, such shares shall remain outstanding and will be entitled to all of the powers, designations, preferences and other rights (including but not limited to the payment of Preferred Dividends and the conversion rights) as provided herein.

(5) Notwithstanding anything in this Section 5 to the contrary, each holder shall retain the right, through to the Close of Business three (3) days prior to the Fundamental Change Purchase Date (or if such third day prior to the Fundamental Change Purchase Date is not a Business Day, through the Close of Business on the immediately succeeding Business Day), to withdraw an election to have its shares of Series A Preferred Stock repurchased pursuant to this Section 5(b); provided, however, that where it exercises such right, the shares pertaining thereto shall not be repurchased pursuant to this Section 5(b).

(6) The Company will not enter into any agreement providing for or otherwise authorize, and the Company shall not have the corporate power to effect, a Fundamental Change constituting a Business Combination unless such third party acquirer agrees in writing to cause the Company to make the repurchases contemplated in and to otherwise comply in all respects with this Section 5(b) and agrees, for the benefit of the holder (including by making each holder of Series A Preferred Stock an express beneficiary of such agreement), that to the extent the Company is not legally able to repurchase the Series A Preferred Stock, such third-party acquirer or an Affiliate of the third-party acquirer will purchase the Series A Preferred Stock on the terms set forth in this Section 5(b).

(7) Any repurchase of the Series A Preferred Stock pursuant to this Section 5(b) shall be payable out of any cash legally available therefor, and if there is not a sufficient amount of cash available, then the Company shall or shall cause its Subsidiaries to, to the extent necessary, sell remaining assets of the Company or of its Subsidiaries, as applicable, legally available therefor for cash and shall use the proceeds therefrom to fund the repurchase of Series A Preferred Stock pursuant to this Section 5(b). To the extent that the Company has insufficient funds, after the sale of assets contemplated the preceding sentence, to repurchase all of the shares of Series A Preferred Stock pursuant to this Section 5(b), the Company shall repurchase as many of such shares as it has cash legally available therefor and shall thereafter from time to time, as soon as it shall have cash (including upon the future sale of assets by the Company or by its Subsidiaries as contemplated by the preceding sentence) legally available therefor, make payment of as much of the remaining amount as it legally may until it has made such payment in its entirety. For the avoidance of doubt, such partial payments shall not reduce or waive the rights of any holder of Series A Preferred Stock hereunder.

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**(c) Make-Whole Redemption.**

(1) On and after the Original Issuance Date and prior to the thirty-month (30) anniversary of the Original Issuance Date, the Company, at its option, may redeem (out of funds legally available therefor) all outstanding shares of Series A Preferred Stock at a purchase price per share in cash equal to the sum of (A) the Accrued Amount (including Accrued Dividends up to and including the Make-Whole Redemption Date) and (B) the aggregate amount of all Preferred Dividends that would have been paid in respect of an outstanding share of Series A Preferred Stock in each remaining Dividend Period from the Make-Whole Redemption Date through the thirty-month (30) anniversary of the Original Issue Date assuming all such Preferred Dividends were paid in the form of PIK Dividend *multiplied by* \$1,000 (the “Make-Whole Redemption Price”); provided, however, that prior to any such redemption becoming effective, subject (prior to the receipt of Stockholder Approval) to Section 6(d), each holder of Series A Preferred Stock may, at such holder’s election, convert any or all of such holder’s outstanding shares of Series A Preferred Stock into the number of shares of Common Stock equal to the Per Share Amount for each such share (an election pursuant to this Section 5(c) or Section 5(d), a “Pre-Redemption Conversion Election”); provided, further, that, with respect to any redemption date occurring prior to the receipt of Stockholder Approval, if the Investor or any Affiliate of the Investor with which the Investor has formed a “group” (within the meaning of Rule 13d-5 under the Exchange Act) with respect to shares of Common Stock (the Investor, collectively with each such Affiliate, the “Capped Holders”) has made a Pre-Redemption Conversion Election and if the sum, without duplication, of (A) the aggregate number of shares of Common Stock issued to such Capped Holders upon the conversion of the shares with respect to which such election was made and any Conversion Shares then held by such Capped Holders, plus (B) the number of shares of Common Stock underlying shares of Series A Preferred Stock that would be held at such

time by such Capped Holders (after giving effect to such conversion) would exceed the Conversion Cap (without regard to the Conversion Cutback), then the Capped Holders making such election shall be entitled to convert such number of shares as would result in the sum of clauses (A) and (B) (after giving effect to such conversion) being equal to the Conversion Cap (after giving effect to the Conversion Cutback) (the provisions of this proviso being referred to as the “Conversion Cutback”). Each share of Series A Preferred Stock which by reason of the foregoing proviso is not converted shall be redeemed for cash in an amount equal to the dollar value of the Common Stock that its holder would be entitled to receive if such holder had converted such share of Series A Preferred Stock pursuant to Section 6(a) immediately prior to the Make-Whole Redemption Date (as defined below), based on the Closing Price on the Make-Whole Redemption Date (without regard to any reduction pursuant to Section 6(d)).

(2) If the Company elects to redeem the outstanding shares of Series A Preferred Stock pursuant to Section 5(c)(1) and the holders of Series A Preferred Stock have not made the Pre-Redemption Conversion Election, the “Make-Whole Redemption Date” shall be the date on which the Company elects to consummate such redemption. The Company shall deliver to the holders of Series A Preferred Stock a written notice of such redemption (a “Make-Whole Redemption Notice”) not less than fifteen (15) Business Days prior to the Make-Whole Redemption Date. The Make-Whole Redemption Notice must state the following: the aggregate number of shares of Series A Preferred Stock to be redeemed, the Make-Whole Redemption Date, the Make-Whole Redemption Price and that the Preferred Dividends, if any, on the shares to be redeemed will cease to accrue on such Make-Whole Redemption Date; provided that the

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Make-Whole Redemption Price shall have been paid in full on the Make-Whole Redemption Date.

(3) Upon the Make-Whole Redemption Date, the Company shall pay the Make-Whole Redemption Price in respect of each share of Series A Preferred Stock to the holders of Series A Preferred Stock by wire transfer of immediately available funds. The Company shall remain liable for the payment of the Make-Whole Redemption Price in respect of each share of Series A Preferred Stock to the extent such amounts are not paid as provided herein.

(4) Shares of Series A Preferred Stock to be redeemed on the Make-Whole Redemption Date will, on and after such date, no longer be deemed to be outstanding and all powers, designations, preferences and other rights of such shares (except the right to receive from the Company the Make-Whole Redemption Price in respect of each share of Series A Preferred Stock) shall cease and terminate; provided that in the event that any shares of the Series A Preferred Stock are not redeemed due to a default in payment by the Company or because the Company is otherwise unable to or fails to pay the Make-Whole Redemption Price in cash in full on the Make-Whole Redemption Date, such shares will remain outstanding and will be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of the Preferred Dividends) as provided herein.

(5) Any redemption of the Series A Preferred Stock pursuant to this Section 5(c) shall be payable out of cash legally available therefor. The Company shall not be permitted to effect such redemption if the Company has insufficient funds to redeem the shares of Series A Preferred Stock to be so redeemed.

**(d) Company Redemption.**

(1) On and after the thirty-month (30) anniversary of the Original Issuance Date, the Company, at its option, may redeem (out of funds legally available therefor) all outstanding shares of Series A Preferred Stock at a purchase price per share in cash equal to the Accrued Amount (the “Company Redemption Price”); provided, however, that prior to any such redemption by the Company becoming effective, the holders of Series A Preferred Stock may, at their election, make a Pre-Redemption Conversion Election; provided, further, that, with respect to any redemption date occurring prior to the receipt of Stockholder Approval, any Pre-Redemption Conversion Election pursuant to this Section 5(d) by a Capped Holder shall be subject to the Conversion Cutback. Each share of Series A Preferred Stock which by reason of the foregoing proviso is not converted shall be redeemed for cash in an amount equal to the dollar value of the Common Stock that its holder would be entitled to receive if such holder had converted such share of Series A Preferred Stock pursuant to Section 6(a) immediately prior to the Company Redemption Date (as defined below), based on the Closing Price on the Company Redemption Date (without regard to any reduction pursuant to Section 6(d)).

(2) If the Company elects to redeem the outstanding shares of Series A Preferred Stock pursuant to Section 5(c)(1) and the holders of Series A Preferred Stock have not made the Pre-Redemption Conversion Election, the “Company Redemption Date” shall be the date on which the Company elects to consummate such redemption. The Company shall deliver to the holders of Series A Preferred Stock a written notice of such redemption (a “Company Redemption Notice”) not less than fifteen (15) Business Days prior to the Company Redemption Date. The Company Redemption Notice must state the following: the aggregate number of shares of Series A Preferred Stock to be redeemed, the Company Redemption Date, the Company Redemption Price and that the Preferred Dividends, if any, on the shares to be redeemed will cease to accrue on such Company Redemption Date; provided that the Company Redemption Price shall have been paid in full on the Company Redemption Date.

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Notice”) not less than fifteen (15) Business Days prior to the Company Redemption Date. The Company Redemption Notice must state the following: the aggregate number of shares of Series A Preferred Stock to be redeemed, the Company Redemption Date, the Company Redemption Price and that the Preferred Dividends, if any, on the shares to be redeemed will cease to accrue on such Company Redemption Date; provided that the Company Redemption Price shall have been paid in full on the Company Redemption Date.

(3) Upon the Company Redemption Date, the Company shall pay the Company Redemption Price in respect of each share of Series A Preferred Stock to the holders of Series A Preferred Stock by wire transfer of immediately available funds. The Company shall remain liable for the payment of the Company Redemption Price in respect of each share of Series A Preferred Stock to the extent such amounts are not paid as provided herein.

(4) Shares of Series A Preferred Stock to be redeemed on the Company Redemption Date will, on and after such date, no longer be deemed to be outstanding and all powers, designations, preferences and other rights of such shares (except the right to receive from the Company the Company Redemption Price) shall cease and terminate; provided that in the event that any shares of the Series A Preferred Stock are not redeemed due to a default in payment by the Company or because the Company is otherwise unable to or fails to pay the Company Redemption Price in cash in full on the Company Redemption Date, such shares will remain outstanding and will be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of the Preferred Dividends) as provided herein.

(5) Any redemption of the Series A Preferred Stock pursuant to this Section 5(d) shall be payable out of cash legally available therefor. The Company shall not be permitted to effect such redemption if the Company has insufficient funds to redeem the shares of Series A Preferred Stock to be so redeemed.

(a) **Conversion at the Option of the Holders.** Each share of Series A Preferred Stock may be converted on any date, from time to time, at the option of the holder thereof, into the number of shares of Common Stock equal to the applicable Conversion Price *multiplied* by the Conversion Rate in effect at such time (without regard to any reduction pursuant to paragraph (d) of this Section 6) (the “*Per Share Amount*”). The right of conversion attaching to any shares of Series A Preferred Stock may be exercised by the holders thereof by delivering the shares to be converted to the office of the Company, accompanied by a duly signed and completed notice of conversion in form reasonably satisfactory to the Company. The conversion date shall be the date on which the shares of Series A Preferred Stock and the duly signed and completed notice of conversion are received by the Company. The Person entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock as of such conversion date, and such Person or Persons shall cease to be a record holder of the Series A Preferred Stock on that date. As promptly as practicable on or after the conversion date (and in any event no later than three Trading Days thereafter), the Company shall issue the number of shares of Common Stock issuable upon conversion by such holder (rounding any fractional share to the nearest whole share after aggregating all shares of Common Stock being issued to such holder upon such conversion). Such delivery shall be made, at the

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option of the applicable holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate holder on a book-entry basis or by mailing certificates evidencing the shares to the holders at their respective addresses as set forth in the conversion notice.

(b) **Underlying Common Stock.**

(1) The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series A Preferred Stock then outstanding. Any shares of Common Stock issued upon conversion of Series A Preferred Stock shall be (A) duly authorized, validly issued and fully paid and nonassessable, (B) shall rank *pari passu* with the other shares of Common Stock outstanding from time to time and (C) shall be approved for listing on the Nasdaq Global Select Stock Market (or, if the Common Stock is not traded on Nasdaq Global Select Stock Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)).

(2) The Company will use its commercially reasonable efforts to cause and maintain the listing of shares of Common Stock on the Nasdaq Global Select Market. The Company shall not voluntarily delist the Common Stock from the Exchange. In the event that the Common Stock is delisted from the Exchange, the Company shall use its commercially reasonable efforts to take, or cause to be taken, all actions necessary to have such shares of Common Stock to be promptly listed for trading on any of the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, The New York Stock Exchange or any other United States national securities exchange.

(c) **Taxes.** The Company shall pay any and all transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Series A Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

(d) **Share Issuance Limitation.** Anything to the contrary in this Section 6(a) notwithstanding, in respect of any conversion of the Series A Preferred Stock at the option of a Capped Holder with a conversion date occurring prior to the receipt of Stockholder Approval, , if the sum, without duplication, of (A) the aggregate number of shares of Common Stock issued to such Capped Holder upon such conversion and any Conversion Shares then held by the Capped Holders, plus (B) the number of shares of Common Stock underlying shares of Series A Preferred Stock that would be held at such time by the Capped Holders (after giving effect to such conversion), would exceed the Conversion Cap (without regard to any limitation on conversion pursuant to this Section 6(d)), then the Capped Holders shall be entitled to convert such number of shares as would result in the sum of clauses (A) and (B) (after giving effect to such conversion) being equal to the Conversion Cap (after giving effect to any such limitation on

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conversion). Any shares of Series A Preferred Stock which a holder has elected to convert but which, by reason of the previous sentence are not so converted, shall be treated as if the holder had not made such election to convert and such shares of Series A Preferred Stock shall remain outstanding.

**Section 7 Dilution Adjustments.** The Conversion Rate shall be adjusted from time to time (successively and for each event described) by the Company as follows:

(a) If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, issue shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination in respect of the Common Stock, then the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or combination, as applicable;

CR<sub>1</sub> = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or share combination, as applicable;

- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or share combination, as applicable; and
- OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the Close of Business on the effective date of such share split or share combination, as applicable.

The Company shall not pay any dividend or make any distribution on shares of Common Stock held in treasury by the Company.

- (b) Except as otherwise provided for by Section 7(c), if the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, distribute to all or substantially all holders of its outstanding shares of Common Stock any options, rights or

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warrants entitling them for a period of not more than 45 days from the Record Date of such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the Closing Price of the Common Stock on the Trading Day immediately preceding the Record Date of such distribution, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;
- CR<sub>1</sub> = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such distribution;
- X = the total number of shares of Common Stock issuable pursuant to such options, rights or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such options, rights or warrants *divided* by the average Closing Price of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement of such rights, options or warrants.

To the extent that shares of Common Stock are not delivered pursuant to any such options, rights or warrants that are non-transferable upon the expiration or termination of such options, rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the distribution of such options, rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered.

In determining the aggregate price payable to exercise such options, rights or warrants, there shall be taken into account any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

- (c) (i) If the Company, at any time or from time to time while any of the Series A Preferred Stock is outstanding, shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock shares of any class of Capital Stock, cash, evidences of its indebtedness, assets, property or rights or warrants to acquire Capital Stock or other securities, but excluding (A) dividends or distributions as to which an adjustment under Section 7(a) or Section 7(b) shall apply; (B) dividends or distributions paid exclusively in cash to the extent that the Series A

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Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with Section 4(a); and (C) Spin-Offs to which Section 7(c)(ii) shall apply (any of such shares of Capital Stock, cash, indebtedness, assets, property or rights or warrants to acquire Common Stock or other securities, hereinafter in this Section 7(c) called the “Distributed Property”), then, in each such case the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;
- CR<sub>1</sub> = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;
- SP<sub>0</sub> = the average Closing Price of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Record Date for such distribution; and
- FMV = (i) for cash dividends or distributions, the amount of cash distributed and (ii) for other Distributed Property, the fair market value (as determined in good faith by the Board of Directors) of the portion of Distributed Property, in each case, with respect to each outstanding share of Common Stock on the Record Date for such distribution.

Notwithstanding the foregoing, if the then-fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than SP<sub>0</sub> as set forth above (a “Liquidating Distribution”), then in lieu of the foregoing adjustment, the Company shall distribute to each holder of Series A Preferred Stock on the date such Distributed Property is distributed to holders of Common Stock, but without requiring such holder to convert its shares of Series A Preferred Stock, the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Per Share Amount on the Record Date fixed for determination for stockholders entitled to receive such Liquidating Distribution; provided, however, that the Company shall not distribute Distributed Property to either the holders of the Common Stock or the Preferred Stock to the extent such distribution would be prohibited by any provision of any Debt Document. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 7(c)(i) by reference to the actual or when issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock for purposes of calculating SP<sub>0</sub> in the formula in this Section 7(c)(i).

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(ii) With respect to an adjustment pursuant to this Section 7(c) where there has been a payment of a dividend or other distribution on the Common Stock consisting of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a “Spin-Off”), the Conversion Rate in effect immediately before the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off;
- CR<sub>1</sub> = the new Conversion Rate in effect from and after the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off;
- FMV<sub>0</sub> = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off; and
- MP<sub>0</sub> = the average Closing Price of the Common Stock over the 10 consecutive Trading Day period calculated immediately following, and including, the effective date of the Spin-Off.

Such adjustment shall occur on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off.

For purposes of this Section 7(a), 7(b) and 7(c) hereof, any dividend or distribution to which this Section 7(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 7(a) or 7(b) hereof applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants to which Section 7(a) or 7(b) applies (and any Conversion Rate adjustment required by this Section 7(c) with respect to such dividend or distribution shall then be made), immediately followed by (2) a dividend or distribution of such shares of Common Stock or such options, rights or warrants to which Section 7(a) or 7(b) applies (and any further Conversion Rate adjustment required by Section 7(a) and 7(b) with respect to such dividend or distribution shall then be made), except (A) all references to the “Record Date” in Section 7(a) and 7(b) hereof shall be deemed to refer to the Record Date of such dividend or distribution and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Close of Business on the Record Date or the Close of Business on the effective date” within the meaning of Section 7(a).

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If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, distribute options, rights or warrants to all or substantially all holders of Common Stock entitling the holders thereof to subscribe for, purchase or convert into shares of Capital Stock (either initially or under certain circumstances), which options, rights or warrants, until the occurrence of a specified event or events (“Trigger Event”): (x) are deemed to be transferred with such shares of Common Stock; (y) are not exercisable; and (z) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 7(c), (and no adjustment to the Conversion Rate under this Section 7(c) shall be required) until the occurrence of the earliest Trigger Event and a distribution or deemed distribution under the terms of such options, rights or warrants at which time an appropriate adjustment (if any is required) to the Conversion Rate shall be made in the same manner as provided for in this Section 7(c). If any such options, rights or warrants are subject to events, upon the occurrence of which such options, rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new options, rights or warrants for purposes of this Section 7(c) (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of options, rights or warrants (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate in this Section 7(c) was made, (1) in the case of any such options, rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a distribution pursuant to this Section 7(c), equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such options, rights or warrants (assuming such holder had retained such options, rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such options, rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such options, rights or warrants had not been issued.

(d) If the Company makes a payment in respect of a tender or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the last reported sale prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day after the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such

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tender or exchange offer expires;

CR<sub>1</sub> = the new Conversion Rate effect immediately after the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Company in good faith and in a commercially reasonable manner) paid or payable for shares of the Common Stock purchased in such tender or exchange offer;

OS<sub>0</sub> = the number of shares of the Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);

OS<sub>1</sub> = the number of shares of the Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP<sub>1</sub> = the average of the last reported sale prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

(e) The Company may make increases in the Conversion Rate, in addition to any other increases required by this Section 7, if the Board of Directors (by action of a majority of the directors excluding the Series A Preferred Directors (“Independent Majority”)) deems it advisable and necessary to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of options, rights or warrants for Common Stock) or from any event treated as such for income tax purposes or for any other reason; provided, however, that if there is a Series A Preferred Director on the Board of Directors at such time, the Company may not take such action without the approval of the Series A Preferred Directors, which approval may only be withheld if the Series A Preferred Directors reasonably determine that such action is likely to result in a material increase in U.S. federal income tax or withholding tax to holders of Series A Preferred Stock. If the Company takes any action affecting the Common Stock, other than an action described in Sections 7(a) through (d), which upon a determination by the Board of Directors by action of an Independent Majority, such determination intended to be a “fact” for purposes of Section 151(a) of the General Corporation Law of the State of Delaware, would materially adversely affect the conversion rights (including the value thereof) of the holders of the Series A Preferred Stock, the Conversion Rate shall be increased, to the extent permitted by law, in such manner, if any, and at

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such time, as the Board of Directors by action of an Independent Majority determines in good faith to be equitable in the circumstances.

## Section 8 Series A Preferred Directors.

(a) **Series A Preferred Directors.** Each Person appointed or elected to the Board of Directors by the holders of the Series A Preferred Stock is referred to herein as a “Series A Preferred Director” and, collectively, the “Series A Preferred Directors.” The initial Series A Preferred Directors shall be [·] and [·], with each of them to serve until at least the 2018 annual meeting of the Company’s stockholders or such individual’s earlier resignation, death or removal.

(b) **Election; Removal; Replacement; Number.**

(1) The holders of Series A Preferred Stock, voting separately as a class, shall be entitled at each annual meeting of the stockholders of the Company or at any special meeting called for the purpose of electing directors to elect a number of Series A Preferred Directors as set forth in this Section 8(b). The Series A Preferred Directors shall not be subject to the classified board of directors provisions of Article VI of the Certificate of Incorporation nor classified into Class I, Class II or Class III. The initial Series A Preferred Directors, designated by the Investor pursuant to Section 8(a), shall take office effective as of the Original Issuance Date. Each Series A Preferred Director appointed or elected to the Board of Directors shall continue to hold office until the next annual meeting of the stockholders of the Company and until his or her successor is elected and qualified in accordance with this Section 8(b) and the Bylaws. A majority of the outstanding shares of the Series A Preferred Stock, voting as a single class, at a meeting called for such purpose (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting) shall have the sole right to remove a Series A Preferred Director. Any vacancy created by the removal, resignation or death of a Series A Preferred Director shall solely be filled by a majority of the outstanding shares of the Series A Preferred Stock, voting as a single class, at a meeting called for such purpose (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting).

(2) The holders of a majority of the Series A Preferred Stock, voting separately as a class, shall be entitled at each annual meeting of the stockholders of the Company or at any special meeting called for the purpose of electing directors to (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting): (A) to nominate and elect two (2) members of the Board of Directors for so long as the Preferred Percentage is equal to or greater than 10%; and (B) to nominate and elect one (1) Series A Preferred Director for so long as the Preferred Percentage is equal to or greater than 5% but less than 10%. For the avoidance of doubt, upon the Preferred Percentage becoming less than 5%, the holders of the Series A Preferred Stock shall not be entitled to elect any members of the Board of Directors.

(3) In accordance with the provisions of this Section 8(b), at each meeting of the Company's stockholders at which the election of directors is to be considered, the Board of Directors shall nominate the Series A Preferred Director(s) designated by the holders of a majority of the Series

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A Preferred Stock for election to the Board of Directors by the holders of the Series A Preferred Stock, subject to the terms and conditions of the Investor Rights Agreement.

(c) **Committees.** Without prejudice to the rights of the Investor pursuant to the Investor Rights Agreement, after the date hereof, and subject to applicable law and the listing standards of the Nasdaq Global Select Market (or, if the Common Stock is not traded on Nasdaq Global Select Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)), the Series A Preferred Directors shall be offered the opportunity to, at the Investor's option, either sit on each regular committee of the Board of Directors in relative proportion (if a fraction, rounded up to the next whole number of directors) to the number of Series A Preferred Directors on the Board of Directors or attend (but not vote) at the meetings of such committee as an observer. If a Series A Preferred Director fails to satisfy the applicable qualifications under law or stock exchange listing standard to sit on any committee of the Board of Directors, then the Board of Directors shall offer such Series A Preferred Director the opportunity to attend (but not vote) at the meetings of such committee as an observer.

(d) **Compensation.** Each of the Series A Preferred Directors shall be entitled to receive similar compensation, benefits, reimbursement (including of reasonable travel expenses), indemnification and insurance coverage for their service as directors as the other outside directors of the Company. For so long as the Company maintains directors and officers liability insurance, the Company shall include each Series A Preferred Director as an "insured" for all purposes under such insurance policy for so long as such Series A Preferred Director is a director of the Company and for the same period as for other former directors of the Company when such Series A Preferred Director ceases to be a director of the Company.

## Section 9 Investor Rights.

(a) **Investor Rights as to Particular Matters.** In addition to any vote or consent of stockholders of the Company required by applicable law or by the Certificate of Incorporation, for so long as the holders of the Series A Preferred Stock have a right to elect a director pursuant to Section 8(b), the Company shall not, and shall not permit any of its Subsidiaries to, take any of the actions described in clauses (1) through (9) below without the prior written consent of the Investor:

### (1) Dividends, Repurchase and Redemption.

(A) The declaration or payment of any dividend or distribution on the Common Stock, other Junior Stock or Parity Stock (other than (i) a dividend payable solely in Junior Stock and (ii) dividends or distributions paid exclusively in cash to the extent that the Series A Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with Section 4(a)) if, at the time of such declaration, payment or distribution, dividends on the Series A Preferred Stock have not been paid in full in cash; or

(B) the purchase, redemption or other acquisition for consideration by the Company, directly or indirectly, of any Common Stock, other Junior Stock or Parity Stock (except as necessary to effect (1) a reclassification of Junior Stock for or into other Junior Stock, (2) a reclassification of

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Parity Stock for or into other Parity Stock with the same or lesser aggregate liquidation preference, (3) a reclassification of Parity Stock into Junior Stock, (4) the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, (5) the exchange or conversion of one share of Parity Stock for or into another share of Parity Stock with the same or lesser per share liquidation amount or (6) the exchange or conversion of one share of Parity Stock into Junior Stock), in each case if, at the time of such purchase, redemption or other acquisition, dividends on the Series A Preferred Stock have not been paid in full in cash.

(2) **Amendment of Series A Preferred Stock.** The amendment, alteration, modification or repeal (whether by merger, consolidation, by operation of law or otherwise) of any provisions of the Certificate of Incorporation (including this Certificate of Designations) or Bylaws in any manner that adversely affects the rights, preferences, privileges or voting powers of the Series A Preferred Stock or any holder thereof.

(3) **Authorizations and Reclassifications.** Any amendment or alteration (whether by merger, consolidation, operation of law or otherwise) of the Certificate of Incorporation (including this Certificate of Designations) or any provision thereof in any manner that would, or the undertaking of any other action to, authorize, create, split, classify, or increase the number of authorized or issued shares of, or any securities convertible into shares of, or reclassify any security into, any Junior Stock, Parity Stock (including additional shares of the Series A Preferred Stock other than shares of the Series A Preferred Stock issued as PIK Dividends) or Capital Stock that would rank senior to the Series A Preferred Stock.

(4) **Issuances.** Any amendment or alteration (whether by merger, consolidation, operation of law or otherwise) of the Certificate of Incorporation (including this Certificate of Designations) or any provision thereof in any manner that would authorize or result in the issuance of, or the undertaking of any other action to authorize or issue, Parity Stock (including additional shares of the Series A Preferred Stock other than shares of the Series A Preferred Stock issued as PIK Dividends) or Capital Stock that would rank senior to the Series A Preferred Stock.

(5) **Changes in the Size of the Board.** (A) The amendment, alteration, modification or repeal (whether by merger, consolidation, by operation of law or otherwise) of any provisions of the Certificate of Incorporation (including this Certificate of Designations) or Bylaws that increases or decreases the size of



the Board of Directors after the Original Issuance Date or (B) the authorization or adoption of any resolution that would have the effect of increasing or decreasing the number of directors constituting the Board of Directors

- (6) **Nominating Committee and Related Changes.** Any (A) amendment, alteration, modification or repeal (whether by merger, consolidation, by operation of law or otherwise) of any provisions of (i) the charter of the Nominating Committee (and any related organizational documents) or (ii) the Company's corporate governance guidelines (or similar document) addressing any matters concerning the Nominating Committee or (B) increase or decrease in the size of the Nominating Committee.
- (7) **2018 Budget.** Approval of the Company's budget for the fiscal-year 2018.

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- (8) **Bankruptcy.** Any voluntary petition under any applicable federal or state bankruptcy or insolvency law effected by the Company or any Subsidiary of the Company.
- (9) **Strategy.** Any change in the principal business of the Company or its Subsidiaries, taken as a whole, or the entry into any line of business (whether by merger, consolidation, acquisition of stock or assets or otherwise) outside of its existing line of businesses by the Company or any of its Subsidiaries, or any agreement or understanding to do any of the foregoing.

**(b) Additional Investor Rights as to Particular Matters.**

- (1) **EBITDA Non-Compliance.** In addition to any vote or consent of stockholders of the Company required by applicable law or by the Certificate of Incorporation, for so long as the holders of the Series A Preferred Stock have a right to elect a director pursuant to Section 8(b), if the Company is in EBITDA Non-Compliance, with respect to any action specified in clauses (A) through (C) below, the Company shall not, and shall not permit any of its Subsidiaries to, take, agree or otherwise commit to take any of the following actions without the prior written consent of the Investor:

(A) **Incurrence of Indebtedness.** The incurrence of any indebtedness by the Company or its Subsidiaries pursuant to any Debt Document in an aggregate principal amount in excess of ten million dollars (\$10,000,000) (with "principal amount" for purposes of this definition to include undrawn committed or available amounts) or the entry into, modification, amendment or renewal by the Company or its Subsidiaries of any Debt Document in respect of indebtedness in an aggregate principal amount in excess of ten million dollars (\$10,000,000) (with "principal amount" for purposes of this definition to include undrawn committed or available amounts).

(B) **Business Combinations and Other Transactions.** Entry into or consummation of (i) any Business Combination, joint venture or corporate reorganization by the Company or any of its Subsidiaries or (ii) the purchase, sale, lease, encumbrance, license or other transfer, acquisition or disposition of any material assets, securities, properties, interests or businesses of the Company or any Subsidiary, in each case of clause (i) or (ii), where the fair market value or purchase price exceeds five million dollars (\$5,000,000) individually or ten million dollars (\$10,000,000) in the aggregate in a fiscal year.

(C) **Capital Expenditures.** Authorize, or make any commitment with respect to, capital expenditures of the Company and its Subsidiaries in excess of twenty-five million dollars (\$25,000,000) in the aggregate in a fiscal year.

For purposes of this Certificate of Designations, the Company shall be in "EBITDA Non-Compliance" with respect to any action: (i) in all cases prior to the public announcement of the completion of the Financial Restatement (as defined in the Securities Purchase Agreement); and (ii) following the later of December 31, 2017 and the public announcement of the completion of the Financial Restatement (as defined in the Securities Purchase Agreement), if either (x) the Company generated less than seventy-five million dollars (\$75,000,000) of LTM EBITDA for the twelve-month period ended on the last day of the most recently completed fiscal quarter of the Company prior to the taking of such action or (y) the Leverage Ratio as of the last day of the most recently completed fiscal quarter of the Company prior to the taking of such action (the

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"Applicable Quarter") is equal to or greater than the level shown in the table below for the Applicable Quarter:

Quarter Ended	Level
December 31, 2017	5.5:1
March 31, 2018	5.25:1
June 30, 2018	5:1
September 30, 2018	4.75:1
December 31, 2018	4.5:1
March 31, 2019 and all periods thereafter	4:1

(2) **Pro Forma Leverage Ratio Test For Certain Actions.** In addition to any vote or consent of the stockholders of the Company required by law or by the Certificate of Incorporation and any consent of the Investor required pursuant to Section 9(b)(1), for so long as the holders of the Series A Preferred Stock have a right to elect a director under Section 8(b), the Company shall not, and shall not permit any of its Subsidiaries to, take, agree or otherwise commit to take any action specified in Section 9(b)(1)(A) or Section 9(b)(1)(B) without the prior written consent of the Investor if the Pro Forma Leverage Ratio in respect of such action is greater than 4:1.

(3) **Determination of LTM EBITDA and Leverage Ratio.** Promptly following the end of each fiscal quarter of the Company, the Audit Committee of the Board of Directors shall, in good faith, determine the amount of LTM EBITDA of the Company for the twelve-month period ended on the last day of such fiscal quarter (such amount, which in all cases (A) shall exclude extraordinary items, minority interests, and divested or discontinued operations, and non-traditional revenue and (B) shall not be adjusted for cost reduction actions effected after the Original Issue Date, as so determined by the Audit Committee of the Board, "LTM EBITDA" for such fiscal quarter) and the Leverage Ratio Calculation as of the end of such fiscal quarter (as so determined by the Audit Committee, the "Leverage Ratio"), and promptly thereupon the Company shall notify the Investor in writing of such determination and calculations

(4) **Annual Budget.** Following the Investor's approval of the budget for the fiscal-year 2018, any subsequent annual budget will be reviewed and discussed with the Investor at least 30 days prior to approval by the Company and/or the Board of Directors.

(c) **Changes after Provision for Redemption.** No vote or consent of the holders of Series A Preferred Stock shall be required pursuant to Section 9 if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section 9, all outstanding shares of Series A Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been irrevocably deposited in trust for

redemption for the sole benefit of the holders of the Series A Preferred Stock, in each case, pursuant to Section 5 above.

#### **Section 10 Voting.**

(a) The holders of shares of Series A Preferred Stock shall be entitled to notice of any meeting of the stockholders of the Company in accordance with the applicable provisions of the Bylaws. Each holder of Series A Preferred Stock will have one vote per share on any matter on which holders of Series A Preferred Stock are entitled to vote separately as a class, whether at a meeting or by written consent. The holders of Series A Preferred Stock may take action or consent to any action with respect to such rights without a meeting by delivering a consent in writing or electronics transmission of the holders of the Series A Preferred Stock entitled to cast not less than the minimum number of votes that would be necessary to authorize, take or consent to such action at a meeting of stockholders.

(b) In addition to any vote (or action taken by written consent) of the holders of the shares of Series A Preferred Stock as a separate class provided for herein or by the General Corporation Law of the State of Delaware, the holders of shares of the Series A Preferred Stock shall be entitled to vote with the holders of shares of Common Stock (and any other class or series that may similarly be entitled to vote with the holders of Common Stock) on all matters submitted to a vote or to the consent of the stockholders of the Company (including the election of directors) as one class. In any such vote or action, each holder of shares of Series A Preferred Stock shall be entitled to vote, for each share of Series A Preferred Stock, a number of votes equal to the Conversion Rate; provided, however, that, with respect to any vote taken prior to the receipt of Stockholder Approval, if the sum, without duplication, of (A) the aggregate voting power of the Conversion Shares held by the Capped Holders at the record date of determination of the stockholders entitled to vote on the applicable matter or, if no such record date is established, at the date such vote is taken, plus (B) the aggregate voting power of the shares of Series A Preferred Stock held by the Capped Holders as of such record date or such time, as applicable, would exceed 19.99% of the total voting power (without regard to this proviso) of the Voting Stock outstanding at such date or time, then, with respect to such shares, the Capped Holders shall be entitled to cast a number of votes equal to 19.99 % of such total voting power (after giving effect to this proviso) (the "Voting Cap").

(c) **Record Holders.** To the fullest extent permitted by applicable law, the Company may deem and treat the record holder of any share of the Series A Preferred Stock as the true and lawful owner thereof for all purposes, and the Company shall not be affected by any notice to the contrary.

#### **Section 11 Notices.**

(a) **General.** All notices or communications in respect of the Series A Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law or regulation. Notwithstanding the foregoing, if the Series A Preferred Stock is issued in book-entry form

through The Depository Trust Company or any similar facility, such notices may be given to the holders of the Series A Preferred Stock in any manner permitted by such facility.

(b) **Notice of Certain Events.** The Company shall, to the extent not included in the Exchange Act reports of the Company, provide reasonable written notice to each holder of the Series A Preferred Stock of any event that has resulted in (i) a Fundamental Change and (ii) an event the occurrence of which would result in an adjustment to the Conversion Rate, including the then applicable Conversion Rate.

**Section 12 Replacement Certificates.** The Company shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Company. The Company shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Company of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Company.

**Section 13 Other Rights.** The shares of Series A Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation. Anything in this Certificate of Designations notwithstanding, upon receipt of the Stockholder Approval, the redemption, conversion and voting limitations applicable to the Capped Holders shall cease to be of any further force and effect and the Capped Holders shall permanently cease to be subject to any such limitations (including the limitations of the application of the Conversion Cap or Voting Cap).

**Section 14 Further Assurances.** The Company shall take such actions as are reasonably required in order for the Company to satisfy its obligations under this Certificate of Designations, including, without limitation, using reasonable best efforts in obtaining the approval of the holders of any class or series of Capital Stock, reflecting the increase in the outstanding shares of the Series A Preferred Stock as a result of the PIK Dividends on the stock transfer books of the Company or making any filings, in each case as required pursuant to applicable law or the listing requirements (if any) of any national securities exchange on which any class or series of Capital Stock is then listed or traded. The Company further agrees to cooperate with the holders of Series A Preferred in the making of any filings under applicable law that are to be made by the Company or any such holder in connection with any PIK Dividends or the exercise of any such holder's rights hereunder.

**Section 15 Amendment.** This Certificate of Designations may only be altered, amended, or repealed by the affirmative vote of a majority of the whole Board of Directors and holders of a majority of the outstanding shares of the Series A Preferred Stock, voting as a single class.

**Section 16 Waiver.** Any provision in this Certificate of Designations to the contrary notwithstanding, any provision contained herein and any right of the holders of Series A Preferred Stock granted hereunder may be waived as to all shares of Series A Preferred Stock (and the holders thereof) upon the written consent of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

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**Section 17 Severability.** If any term of the Series A Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be duly executed and acknowledged by its undersigned duly authorized officer this [·] of [·].

**SYNCHRONOSS TECHNOLOGIES, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature Page to Certificate of Designations]*

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## FORM OF INVESTOR RIGHTS AGREEMENT

between

SILVER PRIVATE HOLDINGS I, LLC

and

SYNCHRONOSS TECHNOLOGIES, INC.

Dated as of [ ], [ ]

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## INVESTOR RIGHTS AGREEMENT

This INVESTOR RIGHTS AGREEMENT (this “Agreement”), dated as of [·], [·], by and between Synchronoss Technologies, Inc., a Delaware corporation (the “Company”), and Silver Private Holdings I, LLC, a Delaware limited liability company (the “Investor”).

WHEREAS, the Company and the Investor entered into a Securities Purchase Agreement, dated as of October 17, 2017 (the “Purchase Agreement”), pursuant to which the Company agreed to sell to the Investor, and the Investor agreed to purchase from the Company, shares of Series A Convertible Participating Perpetual Preferred Stock of the Company (such shares, the “Preferred Shares”) on the terms and subject to the conditions set forth in the Purchase Agreement;

WHEREAS, the Certificate of Designations (as set forth below) sets forth certain terms and rights with respect to the Preferred Shares and the Investor; and

WHEREAS, it is a condition to the closing of the transactions contemplated by the Purchase Agreement (the “Closing”) that the Company and the Investor enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained in this Agreement and the Certificate of Designations, and intending to be legally bound by this Agreement, the Company and the Investor agree as follows:

**Section 1. Definitions.** Capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

“Adverse Disclosure” means the public disclosure of material non-public information that, in the good faith judgment of the Independent Directors (after consultation with Investor and legal counsel), (i) would be required to be made in any registration statement filed with the SEC by the Company so that such registration statement would not be materially misleading under applicable securities laws, (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement and (iii) the Company has a bona fide business purpose for not disclosing publicly.

“affiliate” of a specified person means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person.

“Automatic Shelf Registration Statement” means an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act.

“Board” means the Board of Directors of the Company.

“Business Day” means a day except a Saturday, a Sunday or other day on which banks in the City of New York are authorized or required by Law to be closed.

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“Certificate of Designations” means the Certificate of Designations of the Series A Convertible Participating Perpetual Preferred Stock, par value \$0.0001 per share, of the Company.

“Closing” shall have the meaning set forth in the recitals of this Agreement.

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

“Company” shall have the meaning set forth in the preamble of this Agreement.

“Confidential Information” means any and all non-public information concerning the Company that has been or is furnished to the Investor (regardless of the manner in which it is furnished, including without limitation in written or electronic format or orally, gathered by visual inspection or otherwise) by or on behalf of the Company, together with the portions of any documents created by the Investor or its Representatives that contain such information, other than information that (i) is or has become generally available to the public other than as a result of a direct or indirect disclosure by the Investor or its Representatives in violation of this Agreement, (ii) was within the Investor’s or any of its Representatives’ lawful possession prior to its being furnished to the Investor by or on behalf of the Company and was not subject, to the terms of any other non-disclosure or confidentiality agreement with the Company or its representatives, in their capacity as such, that is binding on the Investor and/or such Representatives of the Investor, as applicable, the terms of which would otherwise prohibit such disclosure, (iii) is received from a source other than the Investor or any of its representatives; provided, that in the case of each of (ii) and (iii) above, the source of such information was not known by the Investor to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information at the time the same was disclosed, or (iv) is independently developed by the Investor or any of its Representative without breach of this Agreement.

“control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, partnership interests or other ownership interests, as trustee or executor, by contract or credit arrangement or otherwise.

“Effectiveness Deadline” means with respect to any registration statement required to be filed to cover the resale by the Investor and/or Permitted Holders of Registrable Securities pursuant to Section 2, (i) the date such registration statement is filed, if the Company is a WKSI as of such date and such registration statement is an Automatic Shelf Registration Statement eligible to become immediately effective upon filing pursuant to Rule 462, or (ii) if the Company is not a WKSI, as of the date such registration statement is filed, the fifth (5th) Business Day following the date on which the Company is notified by the SEC that such registration statement will not be reviewed or is not subject to further review and comments and will be declared effective upon request by the Company.

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“Equity-Linked Securities” means any security or instrument convertible into, exercisable or exchangeable for capital stock of the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Filing Deadline” means with respect to any registration statement required to be filed to cover the resale by the Investor and/or Permitted Holders of Registrable Securities pursuant to Section 2, (i) ten (10) days following the written notice of demand therefor by the Investor, if the Company is a WKSI, as of the date of such demand, or (ii) if the Company is not a WKSI as of the date of such demand, (a) fifteen (15) Business Days following the written notice of demand therefor if the Company is then eligible to register for resale Registrable Securities on Form S-3 or (b) if the Company is not then eligible to use Form S-3, twenty (20) Business Days following the written notice of demand therefor, provided that, to the extent that the Company has not been provided the information regarding the Investor, any Permitted Holders and their respective Registrable Securities in accordance with Section 13 at least two (2) Business Days prior to the applicable Filing Deadline, then the such Filing Deadline shall be extended to the second (2nd) Business Day following the date on which such information is provided to the Company.

“Freely Tradable” means, with respect to any security, a security that (i) is eligible to be sold by the holder thereof without any volume or manner of sale restrictions under the Securities Act pursuant to Rule 144 thereunder, (ii) bears no legends restricting the transfer thereof and (iii) bears an unrestricted

CUSIP number (to the extent such security is issued in global form).

“Indemnified Party” shall have the meaning set forth in Section 12(c).

“Indemnifying Party” shall have the meaning set forth in Section 12(c).

“Independence Criteria” shall have the meaning set forth in Section 11(b).

“Independent Directors” shall have the meaning set forth in Section 11(b).

“Inspectors” shall have the meaning set forth in Section 5(k).

“Investor” shall have the meaning set forth in the preamble of this Agreement.

“Investor Indemnitee” shall have the meaning set forth in Section 12(a).

“Investor’s Counsel” shall have the meaning set forth in Section 4(b).

“Law” means any U.S. or non-U.S. law, including any statute, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or other order of a Governmental Authority of competent jurisdiction.

“Nominating and Corporate Governance Committee” means the Nominating and Corporate Governance Committee of the Board; provided that if, at the relevant time, such committee shall not exist or shall not have the responsibility and authority to recommend director

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candidates to the Board, “Nominating and Corporate Governance Committee” shall mean such other committee of the Board having such responsibility and authority.

“Non-Party Affiliates” shall have the meaning set forth in Section 18(k).

“Other Securities” shall have the meaning set forth in Section 3(a).

“Ownership Percentage” means, as of any date, the percentage equal to (i) the aggregate number of shares of Common Stock that the Investor or any Permitted Holders beneficially own (calculated, without duplication, assuming the full conversion (in each case, without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares and any shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of Designations) or issuable as accrued and unpaid PIK Dividends not previously added to the Liquidation Preference (as defined in the Certificate of Designations), in either case on or before such date) *divided* by (ii) the total number of shares of Common Stock then outstanding, (calculated assuming the full conversion (in each case, without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares, the shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of Designations) or issuable as accrued and unpaid PIK Dividends (as defined in the Certificate of Designations) not previously added to the Liquidation Preference, in either case on or before such date).

“Permitted Holders” means (i) the Investor’s affiliates and any partners or members of the Investor or such affiliates, and their respective partners, members and affiliates, in each case holding Registrable Securities as a result of one or more distributions by the Investor or any of such Persons, (ii) any successor entity of the Investor or any Person described in the foregoing clause (i), and (iii) any Person consented to in writing by the Company.

“Person” shall have the meaning set forth in the Purchase Agreement.

“Piggyback Notice” shall have the meaning set forth in Section 3(a).

“Piggyback Registration” shall have the meaning set forth in Section 3(a).

“Preemptive Rights Cap Amount” means, with respect to a Preemptive Rights Issuance, a number of securities which, if divided by the sum of (i) such number of securities plus (ii) the number of securities issued in such Preemptive Rights Issuance, would represent a percentage that is equal to the Ownership Percentage (as of immediately prior to the Preemptive Rights Issuance).

“prospectus” means the prospectus included in a registration statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a registration statement, and all other amendments and supplements to the prospectus, including post-effective amendments.

“Purchase Agreement” shall have the meaning set forth in the recitals of this Agreement.

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“Register,” “registered,” and “registration” shall refer to a registration effected by preparing and (i) filing a registration statement with the Securities and Exchange Commission the SEC in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement by the SEC or (ii) filing a prospectus and/or prospectus supplement in respect of an appropriate effective Shelf Registration Statement.

“Registrable Securities” means (i) shares of Common Stock held by the Investor or any Permitted Holder, (ii) shares of Common Stock issuable (directly or indirectly) upon conversion and/or exercise of any capital stock of the Company, including any Preferred Shares, held by the Investor or any

Permitted Holder and (iii) any securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend, stock split, recapitalization or other distribution with respect to, or in exchange for, or in replacement of, the Common Stock referenced in clauses (i) or (ii) above or this clause (iii); provided that the term “Registrable Securities” shall exclude in all cases any securities (x) that are sold pursuant to an effective registration statement under the Securities Act or publicly resold in compliance with Rule 144, (y) that are immediately Freely Tradable pursuant to Rule 144, or (z) that shall have ceased to be outstanding. Solely for purposes of determining at any time whether any Registrable Securities are then held, outstanding or transferred, the Preferred Shares and any shares of Series A Preferred issued as PIK Dividends shall be treated, on an as-converted basis (without regard to any limitation on conversion in the Certificate of Designations), as Registrable Securities.

“Registration Expenses” shall mean, with respect to any registration and without limitation, (i) all SEC, stock exchange, FINRA and other registration and filing fees, (ii) all fees and expenses of compliance with securities or blue sky laws (including reasonable fees, charges and disbursements of counsel to any underwriter incurred in connection with blue sky qualifications of Registrable Securities as may be set forth in any underwriting agreement), (iii) all word processing, duplicating and printing expenses, messenger and delivery expenses, (iv) fees and disbursements of counsel for the Company and all independent public accountants, (v) fees paid to other Persons retained by the Company, (vi) the Company’s internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (vii) the expenses of any annual audit or quarterly review, (viii) the expenses (including premiums) of any liability or other insurance and (ix) the expenses and fees for listing the securities to be registered on each securities exchange on which the same class of securities issued by the Company are then listed; provided that Registration Expenses shall include Selling Expenses.

“registration statement” means any registration statement that is required to register the resale of Registrable Securities under this Agreement, including the related prospectus and any pre- and post-effective amendments and supplements to each such registration statement or prospectus.

“Representatives” means (i) the Investor’s members, (ii) the Investor’s and its members’ respective affiliates, and (iii) the Investor’s, its members’ and such affiliates’ respective employees, officers, directors, advisors and consultants; provided, that no portfolio company of Siris Capital Group, LLC will have any obligation as a Representative pursuant to this

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Agreement unless and until the Investor furnishes Confidential Information to such portfolio company (it being acknowledged that such furnishing, if at all, shall be pursuant to and in accordance with the confidentiality provisions set forth in this Agreement).

“Sale Notice” shall have the meaning set forth in Section 6(a).

“Scheduled Black-out Period” means the period beginning fifteen (15) calendar days prior to the end of each fiscal quarter and ending upon the completion of the first full trading day after the Company publicly releases its earnings for such fiscal quarter, or as such period is otherwise defined in the Company’s written insider trading policy, applicable generally to officers and directors of the Company.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Securities” means collectively, Registrable Securities and Other Securities.

“Selling Expenses” shall mean all underwriting discounts, selling commissions and stock transfer taxes, if any, applicable to the sale of Registrable Securities and all related fees and expenses of the Investor (other than such fees and expenses included in Registration Expenses).

“Series A Preferred” means the Series A Convertible Participating Perpetual Preferred Stock of the Company, par value \$0.0001 per share.

“Series A Preferred Directors” shall have the meaning set forth in the Certificate of Designations.

“Shelf Registration” shall have the meaning set forth in Section 6(a).

“Shelf Suspension” shall have the meaning set forth in Section 6(a).

“Shelf Suspension Notice” shall have the meaning set forth in Section 6(a).

“Standstill Percentage” means, as of any date, the percentage equal to (i) the aggregate number of shares of Common Stock that the Investor or its affiliates beneficially own (calculated assuming the full conversion (in each case without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares, the shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of Designations) or issuable as accrued and unpaid PIK Dividends not previously added to the Liquidation Preference (as defined in the Certificate of Designations), in either case on or before such date) *divided by* (ii) the total number of shares of Common Stock outstanding determined on a fully diluted, as-if-exercised basis (calculated assuming the exercise and settlement of all compensation awards in respect of capital stock of the Company outstanding as of immediately prior to such date, whether or not exercised, settled, eligible for settlement or vested, and the full conversion (in each case, without regard to any limitation on conversion in the Certificate of Designations) of the Preferred Shares and any shares of Series A Preferred issued as PIK Dividends (as defined in the Certificate of

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Designations) or issuable as accrued and unpaid PIK Dividends not previously added to the Liquidation Preference (as defined in the Certificate of Designations), in either case on or before such date).

“Subsidiary” shall mean any company, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization or other entity at least 50% of the voting capital stock of which is owned, directly or indirectly, by the Company.

“Suspension Period” shall have the meaning set forth in Section 2(d).

“Underwriter Cutback” shall have the meaning set forth in Section 3(b).

“WKSI” shall mean a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act.

## **Section 2. Demand Registration.**

(a) Subject to the terms and conditions of this Agreement, including Section 2(c), if at any time following May 1, 2018, the Company receives a written request from the Investor that the Company register under the Securities Act Registrable Securities representing at least 10% of the Registrable Securities held by the Investor or the Permitted Holders, then the Company shall file, as promptly as reasonably practicable but no later than the applicable Filing Deadline, a registration statement under the Securities Act covering all Registrable Securities that the Investor requests to be registered. The registration statement shall be on Form S-3 (except if the Company is not then eligible to register for resale Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form for such purpose) and, if the Company is a WKSI as of the Filing Deadline, shall be an Automatic Shelf Registration Statement. The Company shall use its commercially reasonable efforts to cause the registration statement to be declared effective or otherwise to become effective under the Securities Act as soon as reasonably practicable but, in any event, no later than the Effectiveness Deadline, and shall use its commercially reasonable efforts to keep the registration statement continuously effective under the Securities Act until the earlier of (1) the date on which the Investor notifies the Company in writing that the Registrable Securities included in such registration statement have been sold or the offering therefor has been terminated or (2) (x) thirty (30) Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is a WKSI and filed an Automatic Shelf Registration Statement in satisfaction of such demand, (y) forty (40) Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is not a WKSI and registered for resale the Registrable Securities on Form S-3 in satisfaction of such demand or (z) fifty (50) Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is neither a WKSI nor then eligible to use Form S-3 and registered for resale the Registrable Securities on Form S-1 or other applicable form in satisfaction of such demand; provided that each period specified in clause (2) of this sentence shall be extended automatically by one (1) Business Day for each Business Day that the use of such registration statement or prospectus is suspended by the Company pursuant to any Suspension Period, pursuant to (d) below or pursuant to Section 5(j).

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(b) If the Investor intends to distribute the Registrable Securities covered by such Investor’s request by means of an underwriting, (i) the Investor shall so advise the Company as a part of its request made pursuant to Section 2(a) and (ii) the Investor shall have the right to appoint the book-running, managing and other underwriter(s) after consultation with the Company.

(c) The Company shall not be required to effect a registration pursuant to this Section 2: (i) after the Company has effected three registrations pursuant to this Section 2, and each of such registrations has been declared or ordered effective and kept effective by the Company as required by Section 5(a); or (ii) more than twice during any single calendar year; provided, however, that a request for registration will not count for the purposes of this limitation if (x) the Investor determines in good faith to withdraw (prior to the effective date of the registration statement relating to such request) the proposed registration or (y) the registration statement relating to such request is not declared effective within the earlier of Effectiveness Deadline.

(d) Notwithstanding anything to the contrary in this Agreement, (1) upon notice to the Investor, the Company may delay the Filing Deadline and/or the Effectiveness Deadline with respect to, or suspend the effectiveness or availability of, any registration statement for up to ninety (90) days in the aggregate in any twelve-month period (a “Suspension Period”) if the Company would have to make an Adverse Disclosure in connection with the registration statement; provided that (i) any suspension of a registration statement pursuant to Section 6(b) or Section 5(j) shall be treated as a Suspension Period for purposes of calculating the maximum number of days of any Suspension Period under this Section 2(d) and (ii) no Suspension Period may overlap with any redemption pursuant to the Certificate of Designations (including Section 5 thereof) through the date that is thirty (30) Business Days following any such redemption; and (2) upon notice to the Investor, the Company may delay the Filing Deadline and/or the Effectiveness Deadline with respect to any registration statement for a period not to exceed thirty (30) days prior to the Company’s good faith estimate of the launch date of, and ninety (90) days after the closing date of, a Company initiated registered offering of equity securities (including equity securities convertible into or exchangeable for Common Stock); provided that (i) the Company is actively employing in good faith all commercially reasonable efforts to launch such registered offering throughout such period, (ii) the Investor and Permitted Holders are afforded the opportunity to include Registrable Securities in such registered offering in accordance with Section 3 and (iii) the right to delay or suspend the effectiveness or availability of such registration statement pursuant to this clause (2) shall not be exercised by the Company more than two (2) times in any twelve-month period and not more than ninety (90) days in the aggregate in any twelve-month period, other than solely due to the Financial Restatement (as defined in the Purchase Agreement) for so long as the Company is using its best efforts to issue the Restated Financial Statements (as defined in the Purchase Agreement). If the Company shall delay any Filing Deadline pursuant to this clause (d) for more than ten (10) Business Days, the Investor may withdraw the demand therefor at any time after such ten (10) Business Days so long as such delay is then continuing by providing written notice to the Company to such effect, and any demand so withdrawn shall not count as a demand for registration for any purpose under this Section 2, including Section 2(c).

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(e) Notwithstanding the foregoing, if the managing underwriter(s) of an underwritten offering in connection with any registration pursuant to this Section 2 advises the Company and the Investor in writing that, in its good faith judgment, the number of Registrable Securities requested to be included in such offering exceeds the number of Registrable Securities which can be sold in such offering at a price acceptable to the Investor, then the number of Registrable Securities so requested to be included in such offering shall be reduced to that number of shares which, in the good faith judgment of the managing underwriter, can be sold in such offering at such price.

## **Section 3. Piggyback Registration.**

(a) Subject to the terms and conditions of this Agreement, if at any time the Company files a registration statement under the Securities Act with respect to an offering of Common Stock or other equity securities of the Company (such Common Stock and other equity securities collectively, “Other Securities”), whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms, (ii) filed solely in connection with any employee benefit or dividend reinvestment plan or (iii) pursuant to a demand registration in accordance with



Section 2), then the Company shall use commercially reasonable efforts to give written notice of such filing to the Investor at least ten (10) Business Days before the anticipated filing date (the “Piggyback Notice”). The Piggyback Notice and the contents thereof shall be kept confidential by the Investor and its affiliates and representatives, and the Investor shall be responsible for breaches of confidentiality by its affiliates and representatives. The Piggyback Notice shall offer the Investor and the Permitted Holders the opportunity to include in such registration statement, subject to the terms and conditions of this Agreement, the number of Registrable Securities as the Investor may reasonably request (a “Piggyback Registration”). Subject to the terms and conditions of this Agreement, the Company shall use its commercially reasonable efforts to include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received from the Investor written requests for inclusion therein within ten (10) Business Days following receipt of any Piggyback Notice by the Investor, which request shall specify the maximum number of Registrable Securities intended to be disposed of by the Investor and any Permitted Holder and the intended method of distribution. For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, the Company may not commence or permit the commencement of any sale of Other Securities in a public offering to which this Section 3 applies unless the Investor shall have received the Piggyback Notice in respect to such public offering not less than ten (10) Business Days prior to the commencement of such sale of Other Securities. The Investor and any Permitted Holder shall be permitted to withdraw all or part of the Registrable Securities from a Piggyback Registration at any time at least two (2) Business Days prior to the effective date of the registration statement relating to such Piggyback Registration. No Piggyback Registration shall count towards the number of demand registrations that the Investor is entitled to make in any period or in total pursuant to Section 2.

(b) If any Other Securities are to be sold in an underwritten offering, (1) the Company or other Persons designated by the Company shall have the right to appoint the book-running, managing and other underwriter(s) for such offering in their discretion and (2) the Investor and any Permitted Holder shall be permitted to include all Registrable Securities requested by the Investor to be included in such registration in such underwritten offering on the

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same terms and conditions as such Other Securities proposed by the Company or any third party to be included in such offering; provided, however, that if such offering involves an underwritten offering and the managing underwriter(s) of such underwritten offering advise the Company in writing that it is their good faith opinion that the total amount of Registrable Securities requested to be so included, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering (an “Underwriter Cutback”), exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the good faith opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows: (x) to the extent such public offering is the result of a registration initiated by the Company, (i) first, all Other Securities being sold by the Company; (ii) second, all Registrable Securities requested to be included in such registration by the Investor and (iii) third all Other Securities of any holders thereof (other than the Company and the Investor) requesting inclusion in such registration, or (y) to the extent such public offering is the result of a registration initiated by any Persons (other than the Company or the Investor) exercising a contractual right to demand registration, (i) first, pro rata among all Other Securities owned by such Persons exercising the contractual right and all Registrable Securities requested by the Investor to be included in such registration, (ii) second, all Other Securities of any holders thereof (other than the Investor, the Company and the Persons exercising the contractual right) requesting inclusion in such registration, pro rata, based on the aggregate number of Other Securities beneficially owned by each such holder; and (iii) third, all Other Securities being sold by the Company.

#### **Section 4. Expenses of Registration.**

(a) Except as specifically provided for in this Agreement, all Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registration hereunder, shall be borne by the Investor in proportion to the number of Registrable Securities for which registration was requested. The Company shall not, however, be required to reimburse the Investor or Permitted Holders, as applicable, for any Registration Expenses incurred by it or them for any registration proceeding begun pursuant to Section 2, the request of which has been subsequently withdrawn by the Investor unless (a) the withdrawal is based upon materially adverse circumstances or conditions or material adverse information concerning the Company or its Subsidiaries that (i) the Company had not publicly disclosed in a report filed with or furnished to the SEC under the Exchange Act at least three (3) Business Days prior to the request or (ii) the Company had not disclosed to any Series A Director in person or by telephone at the last meeting of the Board or any committee of the Board, in each case, at which a Series A Director is present or at any time since the date of such meeting of the Board, (b) the withdrawal is made in accordance with the last sentence of Section 2(d), or (c) the Investor agrees to forfeit its right to one requested registration pursuant to Section 2.

(b) In connection with each registration pursuant to Section 2, in addition to the Registration Expenses payable pursuant to Section 4(a), the Company will reimburse the

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Investor for the reasonable fees and disbursements of one United States counsel, who will be chosen by the Investor in its sole discretion (“Investor’s Counsel”).

**Section 5. Obligations of the Company.** Whenever required to effect the registration of any Registrable Securities pursuant to Section 2 or Section 3 of this Agreement, the Company shall, as promptly as reasonably practicable:

(a) With respect to a Demand Registration, prepare and as soon as practicable file with the SEC a registration statement (including all required exhibits to such registration statement) with respect to such Registrable Securities and use reasonable best efforts to cause such registration statement to become effective, or prepare and file with the SEC a prospectus supplement with respect to such Registrable Securities pursuant to an effective registration statement and keep such registration statement effective or such prospectus supplement current, in the case of a registration pursuant to Section 2, in accordance with Section 2.

(b) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with

respect to the disposition of all securities covered by such registration statement for the period required Section 2 (including any extension provided for therein).

(c) To the extent reasonably practicable, not less than five (5) Business Days prior to the filing of a registration statement or any related prospectus or any amendment or supplement thereto, the Company shall furnish to the Investor and Investor's Counsel copies of all such documents proposed to be filed and give reasonable consideration to the inclusion in such documents of any comments reasonably and timely made by the Investor or its legal counsel; provided that the Company shall include in such documents any such comments that are necessary to correct any material misstatement or omission regarding the Investor.

(d) Furnish to the Investor and Investor's Counsel such number of copies of the applicable registration statement and each such amendment and supplement thereto (including upon request in each case all exhibits but not documents incorporated by reference) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as the Investor may reasonably request in order to facilitate the disposition of Registrable Securities by the Investor and Permitted Holders. The Company hereby consents to the use of such prospectus and each amendment or supplement thereto by the Investor and any participating Permitted Holder in accordance with applicable Law in connection with the offering and sale of the Registrable Securities covered by such prospectus and any amendment or supplement thereto.

(e) Prior to any offering of Common Stock pursuant to the registration statement, the Company shall use commercially reasonable efforts to (i) arrange for the qualification of the Common Stock for offer and sale under the securities or "blue sky" laws of such states of the United States as the Investor shall reasonably request and shall maintain such qualification in effect so long as required to enable the Investor to consummate the disposition in such jurisdictions of the Common Stock, and (ii) reasonably cooperate with the Investor in connection with any filings required to be made with FINRA; provided, that in no event shall the

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Company be obligated to qualify to do business in any jurisdiction where it is not then so qualified or to take any action that would subject it to taxation or service of process in suits, other than those arising out of any offering pursuant to the registration statement, in any jurisdiction where it is not then so subject.

(f) Enter customary agreements and take such other actions as are reasonably required in order to facilitate the disposition of such Registrable Securities, including, if the method of distribution of Registrable Securities is by means of an underwritten offering, using commercially reasonable efforts to, (i) participate in and make documents available for the reasonable and customary due diligence review of underwriters during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company; provided that (A) any party receiving confidential materials shall execute a confidentiality agreement on customary terms if reasonably requested by the Company and (B) the Company may in its reasonable discretion restrict access to competitively sensitive or legally privileged documents or information, (ii) cause the chief executive officer and chief financial officer to be available at reasonable dates and times to participate in "road show" presentations and/or investor conference calls to market the Registrable Securities during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company or the conduct of the Business of the Company; provided that the aggregate number of days of "road show" presentations in connection with an underwritten offering of Registrable Securities for each registration pursuant to a demand made under Section 2 shall not exceed five (5) Business Days and (iii) negotiate and execute an underwriting agreement in customary form with the managing underwriter(s) of such offering and such other documents reasonably required under the terms of such underwriting arrangements, including using commercially reasonable efforts to procure a customary legal opinion and auditor "comfort" letters. The Investor shall also enter into and perform its obligations under any such underwriting agreement.

(g) Give notice to the Investor as promptly as reasonably practicable:

(i) when any registration statement filed pursuant to Section 2 or in which Registrable Securities are included pursuant to Section 3 or any amendment to such registration statement has been filed with the SEC and when such registration statement or any post-effective amendment to such registration statement has become effective;

(ii) of any request by the SEC for amendments or supplements to any registration statement (or any information incorporated by reference in, or exhibits to, such registration statement) filed pursuant to Section 2 or in which Registrable Securities are included pursuant to Section 3 or the prospectus (including information incorporated by reference in such prospectus) included in such registration statement or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement filed pursuant to Section 2 or in which Registrable Securities are included pursuant to Section 3 or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

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(v) of the occurrence of any event that requires the Company to make changes to any effective registration statement or the prospectus so that, as of such date, they (A) do not contain any untrue statement of a material fact and (B) do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in the light of the circumstances under which they were made) not misleading).

(h) Use its commercially reasonable efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 5(g)(iii), at the earliest practicable time.

(i) Upon request, furnish to the Investor, without charge, at least one copy of the registration statement and any post-effective amendment thereto, and, if the Investor so requests in writing, all exhibits thereto

(j) Upon the occurrence of any event contemplated by subsections (g)(iii) through (v) above, the Company shall promptly prepare and file a post-effective amendment to the registration statement or an amendment or supplement to the related prospectus or file any other required document to

remedy the basis for any suspension of the registration statement and so that, as thereafter delivered to any sales or placement agents or underwriters acting on the Investor's behalf, the prospectus will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If the Company notifies the Investor in accordance with subsections (g)(iii) through (v) above to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Investor shall suspend the use of such prospectus and use its commercially reasonable efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in the Investor's or its Representatives' possession; provided that such suspension shall be treated as a Suspension Period for purposes of calculating the maximum number of days of any Suspension Period under Section 2(d).

(k) Use all commercially reasonable efforts to furnish or make available (and cause the Company's officers, directors, employees and independent public accountants to furnish or make available) upon reasonable notice and during normal business hours, for inspection by the Investor, Investor's Counsel, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter (collectively the "Inspectors"), all pertinent financial and other records, pertinent documents and properties of the Company and its Subsidiaries, as shall be reasonably necessary to enable them to exercise their due diligence responsibility pursuant to the Securities Act, the Exchange Act and the rules and regulations thereunder, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such Inspector in connection with such registration statement. Records that the Company determines, in good faith, to be confidential and which it notifies the Inspectors are confidential shall not be disclosed by the Inspectors (and the Inspectors shall confirm their agreement in writing in advance to the Company if the Company shall so request) unless (A) the disclosure of such Records is necessary, in the Inspector's judgment, to avoid or correct a misstatement or omission in the registration statement, (B) the release of such records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction after compliance with the last

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sentence of this clause (k) or (C) the information in such records was known to the Inspectors on a nonconfidential basis prior to its disclosure by the Company or has been made generally available to the public. The Investor agrees that it shall, upon learning that disclosure of such records is sought in a court of competent jurisdiction, give notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of the records deemed confidential.

(l) Keep Investor and Investor's Counsel advised in writing as to the initiation and, as appropriate, of the progress of any registration under Section 2 or Section 3 and provide Investor's Counsel with all correspondence with the SEC in connection with any such registration statement.

(m) No later than the effective date of any registration statement, use commercially reasonable efforts to procure the cooperation of the Company's transfer agent for settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Investor or the managing underwriter(s). In connection therewith, if reasonably required by the Company's transfer agent, the Company shall promptly after the effectiveness of the registration statement cause an opinion of counsel as to the effectiveness of the registration statement to be delivered to and maintained with its transfer agent, together with any other authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the holder of such shares of Registrable Securities under the registration statement.

(n) Use its reasonable best efforts to take or cause to be taken all other actions, and do and cause to be done all other things, necessary or reasonably advisable in the opinion of the Investor to effect the registration of the Registrable Securities contemplated hereby.

#### **Section 6. Suspension of Sales.**

(a) Prior to the sale or distribution of any Registrable Securities pursuant to a registration statement that is for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the SEC), the Investor shall give at least two (2) Business Days prior written notice thereof to the Company (a "Sale Notice") and the Investor (and any participating Permitted Holders) shall not sell or distribute any Registrable Securities unless the Investor has timely provided such Sale Notice and, subject to the Shelf Suspension period described below, until the expiration of such 2-Business Day period. If in response to a Sale Notice, the Company shall provide to the Investor a certificate signed by the Chief Executive Officer of the Company stating that the Company would have to make an Adverse Disclosure (as determined pursuant to the definition thereof) (the "Shelf Restriction"), then the Company may, by written notice thereof to the Investor (a "Shelf Suspension Notice"), suspend use of the registration statement by the Investor (and any participating Permitted Holders) until the expiration of the Shelf Restriction (a "Shelf Suspension"); provided that the period of any such Shelf Suspension may not exceed the Suspension Period set forth in Section 2(d). In the case of a Shelf Suspension, the Investor (and any participating Permitted Holder) agrees to suspend use of the applicable prospectus and any

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issuer free writing prospectuses in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the Shelf Suspension Notice referred to above. The Company shall immediately notify the Investor upon the termination of any Shelf Suspension, and either confirm that the registration statement can be used or supplement or make amendments to the registration statement to the extent required by the registration form used by the Company for the Shelf Registration or by the Securities Act or the rules or regulations promulgated thereunder and promptly notify the Investor thereof. The Company agrees to not deliver a Shelf Suspension Notice to the Investor or otherwise inform the Investor of a Shelf Restriction unless and until the Investor delivers a Sale Notice to the Company.

(b) Upon receipt of written notice from the Company pursuant to Section 5(g)(v), the Investor (and any participating Permitted Holder) shall immediately discontinue disposition of Registrable Securities until the Investor (i) has received copies of a supplemented or amended prospectus or prospectus supplement pursuant to Section 5(j) or (ii) is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Investor shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Investor's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice.

**Section 7. Books and Records; Access.** For so long as the Investor's Ownership Percentage is 5% or more, the Company shall permit the Investor and its designated representatives, at reasonable times and upon reasonable prior notice to the Company, to examine the records and books of account

of the Company and its Subsidiaries and to discuss the affairs, finances and condition of the Company or any of its Subsidiaries with the officers of the Company or any such Subsidiary and the Company's independent accountants. In addition, for so long as the Investor's Ownership Percentage is 5% or more, upon written request of the Investor, the Company shall provide to the Investor duplicate copies of such financial and other information concerning the Company and its Subsidiaries as may from time to time be reasonably requested by such Investor.

**Section 8. Restrictions on Transfer.**

(a) Subject to Section 8(b), the Investor shall not, directly or indirectly, sell, transfer or otherwise dispose of any Preferred Shares or shares of Series A Preferred Stock issued as PIK Dividends without the Company's prior written consent (such consent to be provided or withheld by a majority of directors voting who are independent directors and disinterested in the matter).

(b) Notwithstanding the foregoing Section 8(a), the following transfers ("Permitted Transfers") shall be permitted (without prior consent):

- (i) to a Permitted Holder who agrees to be bound by the terms of this Agreement;
- (ii) in a Reorganization Event (as defined in the Certificate of Designations);

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(iii) in connection with a redemption pursuant to the terms of the Certificate of Designations (including pursuant to Section 5 thereof);

(iv) in connection with a conversion to Common Stock pursuant to the terms of the Certificate of Designations; or

(v) in any Pro Rata Transaction.

(c) For purpose of this Agreement, a "Pro Rata Transaction" shall mean any transaction (excluding any Reorganization Event (as defined in the Certificate of Designations)) in which all stockholders of the Company (x) are offered terms substantially similar to those given to the Investor (as described in clause (y) below), or otherwise are offered the opportunity to, or will, participate in such transaction on a pro rata basis, and (y) are entitled to receive consideration of equal market value (on a per share or as-converted basis), with no value paid to any holder of Preferred Shares in respect of any liquidation preference, option value, dividend (except for any accrued but unpaid dividends in accordance with the Certificate of Designations through the date of such transaction). The Company shall cooperate with, and not frustrate, any transfers by the Investor or Permitted Holders that are not prohibited by this Agreement.

**Section 9. Standstill Restrictions; Voting; Dividends.**

(a) Standstill. For as long as the holders of the Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, without the prior approval by a majority of directors voting who are not Series A Preferred Directors, neither the Investor nor its affiliates shall directly or indirectly purchase or acquire any debt or equity securities of the Company, any Equity-Linked Securities, or any other right to acquire such securities, in each case that would result in the Investor's Standstill Percentage being in excess of 30%; provided, however, the foregoing restrictions shall not prohibit the purchase of the Preferred Shares pursuant to the Purchase Agreement or the receipt of shares of Series A Preferred issued as PIK Dividends pursuant to the Certificate of Designations, shares of Common Stock received upon conversion of Preferred Shares or shares of Series A Preferred issued as PIK Dividends or receipt of any shares of Series A Preferred, Common Stock or other securities of the Company otherwise paid as dividends or as an increase of the Liquidation Preference (as defined in the Certificate of Designations) or distributions thereon.

(b) Sales or Other Process. Notwithstanding Section 9(a), if the Board decides to engage in a process that could reasonably be expected to give rise to a merger, tender offer, substantial share investment, change of control transaction or other extraordinary transaction related to the Company, the Company shall invite the Investor to participate in such process on the terms and conditions generally made available to the other participants in such process; provided, however, that in the event the Investor participates in such process, each Series A Preferred Director shall recuse himself or herself from voting on, or otherwise receiving any confidential information in his or her capacity as a Series A Preferred Director regarding, matters in connection with such process; provided, further, that, following the termination of the Investor's participation in any process, such director's right to vote on, and receive confidential information about, the process shall be reinstated.

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(c) Voting. For as long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, in the event that the Board determines to effect a reorganization, merger, consolidation or similar transaction involving the Company and requiring stockholder approval, the Investor will cause all of its shares of Company Capital Stock that are entitled to vote to be voted in favor of any such transaction, if and only if (a) the Investor will receive an amount in cash equal to the sum of (i) \$185,000,000, (ii) in respect of each share of Series A Preferred, the dollar value of the Accrued Dividends (as defined in the Certificate of Designations), (iii) the dollar value of all outstanding shares of Series A Preferred, if any, issued as PIK Dividends *multiplied by* \$1,000, (iv) in respect of each share of Series A Preferred, the dollar value of any amount of the Net Preferred Dividend (as defined in the Certificate of Designations) added to the Liquidation Preference (as defined in the Certificate of Designations) and (v) if applicable, in respect of each share of Series A Preferred, the aggregate amount of all PIK Dividends that would have been paid in respect of a Preferred Share or share of Series A Preferred issued as PIK Dividends in each remaining Dividend Period (as defined in the Certificate of Designations) from the date of the Board's determination through the thirty-month (30) anniversary of the Original Issue Date *multiplied by* \$1,000, (b) any shares of Common Stock or shares of Series A Preferred then owned by the Investor are not treated in any manner adverse to any other shares of the Company (including, with respect to the shares of Series A Preferred, on an as-converted basis (without regard to any limitation on conversion in the Certificate of Designations) and (c) the terms of such transaction are, taken as a whole, more favorable to the Company's stockholders (as determined by the Board) than the terms of any alternative transaction proposed by the Investor or its affiliates.

(d) The parties acknowledge that the Investor has provided the Company with a schedule accurately presenting the calculation of the Preferred Dividends (as defined in the Certificate of Designations) pursuant to the Certificate of Designations in certain circumstances.

#### **Section 10. Preemptive Rights.**

(a) The Investor will have the preemptive rights set forth in this Section 10 with respect to any issuance of any Common Stock or Equity-Linked Securities that are issued after the date hereof (any such issuance, other than those described in clauses (i) through (iii) below, a “Preemptive Rights Issuance”), except for (i) issuances solely to officers, employees, directors and consultants pursuant to and in accordance with equity incentive plans of the Company that were publicly filed with the SEC prior to the date hereof (provided that any such issuances are made in accordance with the terms, conditions and limitations of such plans as they existed as of the date of hereof and without effect to any amendments or other modifications thereof after the date hereof unless approved in writing by the Investor) or pursuant to equity incentive plans of the Company that are approved by the Board and publicly filed with the SEC after the date hereof, (ii) issuances of shares of Common Stock as consideration in any merger or acquisition approved pursuant to Section 9(c), or (iii) issuances of shares of Common Stock upon conversion of any of the Company’s 0.75% Convertible Senior Notes, due 2019 (provided that any such issuances are made in accordance with the terms, conditions and limitations of the indenture governing such notes as it existed as of the date hereof). The preemptive rights in this Section 10 shall terminate at such time as the holders of Series A Preferred no longer have the

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right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations.

(b) If the Company at any time, or from time to time, effects a Preemptive Rights Issuance, the Company shall give prompt written notice to the Investor (but in no event later than ten (10) days prior to such issuance), which notice shall set forth the number and type of the securities to be issued, the issuance date, the offerees or transferees, the price per security, and all of the other terms and conditions of such issuance, which shall be deemed updated by delivery of the final documentation for such issuance to the Investor. The Investor may, by written notice to the Company (a “Preemptive Rights Notice”) delivered at any time thereafter but no later than twenty (20) days after the consummation of such Preemptive Rights Issuance, elect to purchase (or designate an affiliate to purchase) a number of securities specified in such Preemptive Rights Notice (which number may be any number up to but not exceeding the Preemptive Rights Cap Amount applicable to such Preemptive Rights Issuance), on the same terms and conditions as such Preemptive Rights Issuance (it being understood and agreed that (i) the price per security that the Investors shall pay shall be the same as the price per security set forth in the Preemptive Rights Notice, and (ii) the Investors shall not be required to comply with any terms, conditions, obligations or restrictions (including, without limitation, any non-compete, standstill or other limitations but excluding any remaining period of a transfer or lock-up restriction applicable at such time to other purchasers in such Preemptive Rights Issuance) not necessary for the effectuation of the sale or issuance of such securities). If the Investor exercises its preemptive rights hereunder with respect to such Preemptive Rights Issuance, the Company shall (or shall cause such subsidiary to) issue to the Investor (or its designated affiliate) the number of securities specified in such Preemptive Rights Notice promptly thereafter (and provided that, if the Investor shall have so notified the Company at least 3 Business Days prior to the issuance date set forth in the Company’s notice, at the Investor’s election such purchase and sale shall occur on the same date as, and immediately following, the Preemptive Right Issuance). For the avoidance of doubt, in the event that the issuance of Common Stock or Equity-Linked Securities in a Preemptive Rights Issuance involves the purchase of a package of securities that includes Common Stock or Equity-Linked Securities and other securities in the same Preemptive Rights Issuance, the Investor shall have the right to acquire its pro rata portion of such other securities, together with its pro rata portion of such Common Stock or Equity-Linked Securities, in the same manner described above (as to amount, price and other terms), or solely acquire the Common Stock or Equity-Linked Securities.

(c) The election by the Investor not to exercise its preemptive rights hereunder in any one instance shall not affect its right as to any future Preemptive Rights Issuances.

(d) Notwithstanding anything to the contrary in this Agreement, in the event that the Investor exercises its preemptive rights pursuant to this Section 10 and the purchase or issuance of such securities would require the Company to obtain approval of its stockholders pursuant to NASDAQ listing rule 5635 (or any similar successor rule of NASDAQ or other United States national securities exchange that the Common Stock is listed upon, if any), the Company and the Investor will use their respective commercially reasonable efforts to negotiate in good faith the terms of any such transaction, including without limitation the terms of any securities of the Company issued pursuant to such transaction to the Investor, such that the

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issuance to the Investor would not require such stockholder approval while providing the Investor with substantially similar benefits and rights of such securities issued in the Preemptive Rights Issuance (including with respect to maintaining the Preferred Percentage (as defined in the Certificate of Designations)).

#### **Section 11. Governance.**

(a) Effective as of the Closing, the Board shall consist of ten (10) members, as set forth on Exhibit A hereto.

(b) From and after the Closing, so long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, the Board shall consist of ten (10) members, composed of (i) two (2) Series A Preferred Directors; (ii) four (4) directors who meet the independence criteria set forth in the listing standards of the NASDAQ Global Select Market to the extent applicable to the Company (or other United States national securities exchange that the Common Stock is listed upon, if any) (the “Independence Criteria”), and selected pursuant to Section 11(d) (each such director, an “Independent Director”); and (iii) four (4) other directors, two of whom shall satisfy the Independence Criteria (and, as of the Closing, one (1) of whom shall be the individual then serving as chief executive officer of the Company (as selected pursuant to Section 8.14 of the Purchase Agreement), one (1) of whom shall be the current chairman of the Board and the remaining two (2) shall be two of the directors on the Board as of the date hereof who satisfy the Independence Criteria); provided that the number of Series A Preferred Directors and Independent Directors may be adjusted pursuant to Section 11(e).

(c) The Company shall, at any annual or special meeting of stockholders of the Company at which directors are to be elected, so long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, include the Series A Preferred Directors (or such other persons as may be selected in writing by the Investor) and the Independent Directors in

the Company's slate of nominees as for each relevant annual meeting of the Company's stockholders (subject to each designee's satisfaction of all applicable requirements regarding service as a director of the Company under applicable Law, regulation or stock exchange rules regarding service as a director; provided, however, that in no event shall any such designee's relationship with the Investor (or any other actual or potential lack of independence resulting therefrom) be considered to disqualify such designee from being a member of the Board pursuant to this Section 11(c)) and shall recommend that the holders of the Series A Preferred Stock and/or Common Stock, as applicable, vote in favor of such Series A Preferred Directors and such Independent Directors and shall support such Series A Preferred Directors and Independent Directors in a manner generally no less rigorous and favorable than the manner in which the Company supports its other nominees.

(d) Prior to the Closing, the individuals who shall serve in the capacity of Independent Directors as of the Closing shall be mutually selected by the Nominating and Corporate Governance Committee and the Investor. Such individuals shall be (i) selected in good faith (taking into account the requisite skills and experience required for effective service on the board of directors of a company such as the Company and the compensation required to

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attract and retain a director with such requisite skills) and (ii) meet the Independence Criteria, and the Company and the Investor shall mutually agree upon the class of directors (as provided in Article VI of the Certificate of Incorporation of the Company) in which each such selected Independent Director shall serve as of the Closing. The members of the Nominating and Corporate Governance Committee as of the Closing shall be as set forth on Exhibit A hereto. Following the Closing, so long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate of Designations, the Investor shall have the right to designate two members of the Nominating and Corporate Governance Committee from among the Independent Directors and the Series A Preferred Directors, provided that each such designee shall meet any applicable requirements for service on such committee under the listing standards of the principal stock exchange on which the Common Stock is then listed, if any.

(e) (i) If at any time after the Closing, the Investor no longer meets the Ownership Threshold (as defined in the Certificate of Designations) but maintains the right to nominate one Series A Preferred Director pursuant to Section (8)(b) of the Certificate of Designations, the Investor shall cause one of the Series A Preferred Designees then sitting on the Board to offer to resign from the Board with immediate effect, and (ii) the vacancy caused by such resignation, if accepted by the Board, shall be filled by an Independent Director, in accordance with Section 11(d).

(f) If a Series A Preferred Director resigns, dies, is not elected or is disqualified or removed from the Board, the Investor may nominate a replacement Series A Preferred Director, and such replacement Series A Preferred Director shall promptly be appointed to the Board, as provided in the bylaws of the Company.

(g) The Series A Preferred Directors and the Independent Directors shall be entitled to reimbursement from the Company for all out-of-pocket expenses for travel and other arrangements reasonably incurred and paid by such directors in connection with their participation in meetings of the Board or committees thereof, subject to the provisions of the Company's then current non-employee director compensation program.

(h) From and after the Closing, the Company shall use reasonable best efforts to maintain in effect directors' and officers' insurance with terms, conditions, retentions and limits of liability that are in the aggregate at least as favorable as those contained in such directors' and officers' insurance policies in effect as of the date hereof. Promptly following election to the Board, the Company shall enter into the Company's standard indemnification agreement with each Series A Preferred Director providing for indemnification to the fullest extent permitted by applicable Law.

## **Section 12. Indemnification.**

(a) Notwithstanding any termination of this Agreement, the Company shall indemnify and hold harmless the Investor and any participating Permitted Holder, and their respective officers, directors, employees, agents, partners, members, stockholders, representatives and affiliates, and each person or entity, if any, that controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and the

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officers, directors, employees, agents and employees of each such controlling Person (each, an "Investor Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals), joint or several, arising out of or based upon any untrue or alleged untrue statement of material fact contained or incorporated by reference in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act) prepared by the Company or authorized by it in writing for use by the Investor or any amendment or supplement thereto; or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided that the Company shall not be liable to such Investor Indemnitee to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (i) any untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Investor Indemnitee claiming indemnification specifically for inclusion therein, (ii) offers or sales effected by or on behalf such Investor Indemnitee "by means of" (as defined in Securities Act Rule 159A) a "free writing prospectus" (as defined in Securities Act Rule 405) that was not authorized in writing by the Company, or (iii) the failure to deliver or make available to a purchaser of Registrable Securities a copy of any preliminary prospectus, pricing information or final prospectus contained in the applicable registration statement or any amendments or supplements thereto (to the extent the same is required by applicable Law to be delivered or made available to such purchaser at the time of sale of contract); provided that the Company shall have delivered to the Investor such preliminary prospectus or final prospectus contained in the applicable registration statement and any amendments or supplements thereto pursuant to Section 5(d) no later than the time of contract of sale in accordance with Rule 159 under the Securities Act.

(b) The Investor shall indemnify and hold harmless the Company and its officers, directors, employees, agents, representatives and affiliates against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals) arising out of or based upon any untrue or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act), or any omission or alleged omission to state therein a material fact required to be

stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, but only to the extent, that such untrue statements or omissions are based solely upon written information relating to the Investor furnished to the Company by or on behalf of the Investor specifically for inclusion in the documents referred to in the foregoing indemnity. In no event shall the liability of the Investor hereunder be greater in amount than the dollar amount of the net proceeds received by the Investor and any participating Permitted Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) If any proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an “Indemnified Party”), such Indemnified Party shall promptly notify

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the Person from whom indemnity is sought (the “Indemnifying Party”) in writing, and the Indemnifying Party shall assume the defense in such proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with such defense; provided that any such notice or other communication pursuant to this Section 12 between the Company and an Indemnifying Party or an Indemnified Party, as the case may be, shall be delivered to or by, as the case may be, the Investor; provided, further, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Section 12, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party. An Indemnified Party shall have the right to employ separate counsel in any such proceeding and to participate in the defense of such proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such proceeding; or (3) the named parties to any such proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that representation of both such Indemnified Party and the Indemnifying Party by the same counsel would be inappropriate because of an actual conflict of interest between the Indemnifying Party and such Indemnified Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such proceeding effected without its written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such proceeding. All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, promptly upon receipt of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder, provided that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification under this Section 12).

(d) If the indemnification provided for in Section 12(a) or Section 12(b) is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to in Section 12(a) or Section 12(b), as the case may be, or is insufficient to hold the Indemnified Party harmless as contemplated therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified

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Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnified Party, on the one hand, and the Indemnifying Party, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and of the Indemnified Party, on the other hand, shall be determined by reference to, among other factors, whether the untrue or alleged untrue statement of a material fact or omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Investor agree that it would not be just and equitable if contribution pursuant to this Section 12(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 12(d). Notwithstanding the foregoing, in no event shall the liability of the Investor hereunder be greater in amount than the dollar amount of the net proceeds received by the Investor and any participating Permitted Holder upon the sale of the Registrable Securities giving rise to such contribution obligation. No Indemnified Party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from an Indemnifying Party not guilty of such fraudulent misrepresentation.

**Section 13. Agreement to Furnish Information.** If reasonably requested by the Company or the book-running managing underwriters of Common Stock (or other securities of the Company convertible into Common Stock), the Investor and any participating Permitted Holder shall provide such information regarding the Investor and any participating Permitted Holder, and their respective Registrable Securities, as may be reasonably required by the Company or such representative of the book-running managing underwriters in connection with the filing of a registration statement and the completion of any public offering of the Registrable Securities pursuant to this Agreement.

**Section 14. Rule 144 Reporting.** With a view to making available to the Investor the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities that are Common Stock to the public without registration, the Company agrees to use its commercially reasonable efforts to: (i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of this Agreement; (ii) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and (iii) so long as the Investor and any Permitted Holder owns any Registrable Securities, furnish to the Investor forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as the Investor may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such Common Stock without registration.

**Section 15. Section 16b-3.** So long as the holders of Series A Preferred have the right to nominate a Series A Preferred Director to the Board pursuant to Section 8(b) of the Certificate

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of Designations, the Board shall take such action as is reasonably necessary to cause the exemption of any acquisition or disposition (or deemed acquisition or disposition) of Preferred Shares, shares of Series A Preferred Stock issued as PIK Dividends, shares of Common Stock or any other Registrable Securities by the Investor from the liability provisions of Section 16(b) of the Exchange Act pursuant to Rule 16b-3 so long as such exemption is not prohibited by applicable Law; for the avoidance of doubt, the Company shall pass one or more exemptive resolutions by the Board each time there is any purported acquisition or disposition of Preferred Shares, shares of Series A Preferred Stock issued as PIK Dividends, shares of Common Stock or any other capital stock of the Company by the Investor with requisite specificity to exempt such purported acquisition or disposition from the liability provisions of Section 16(b) of the Exchange Act pursuant to Rule 16b-3.

**Section 16. Confidentiality.**

(a) The parties acknowledge and agree that each Series A Preferred Director may share Confidential Information with the Investor and its affiliates, to the extent reasonably necessary to monitor, evaluate or otherwise make decisions in connection with its investment in the Preferred Shares or the Company. The Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any Confidential Information obtained from the Company pursuant to the terms of this Agreement (including, without limitation, notice of the Company's intention to file a registration statement); provided, however, that the Investor may disclose Confidential Information (i) to its attorneys, accountants, consultants, and other professionals to the extent reasonably necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from the Investor, if such prospective purchaser agrees in writing to be bound by the provisions of this Section 16(a); (iii) in connection with periodic reports to its investors, partners, affiliates or members, the Investor may provide summary information regarding the Company's financial information in such reports, as long as such investors, partners, affiliates and members are advised that such information is confidential or (iv) as may otherwise be required by Law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure. Receipt of Confidential Information shall not be imputed to any entity, whether or not an affiliate of the Investor, solely by virtue of the fact that the Investor's director, officer, employee, agent, contractor, consultant or advisor is also a director, officer, employee, agent, contractor, consultant or advisor of such entity.

(b) Notwithstanding anything to the contrary herein, the restrictions contained in Section 16(a) shall not apply to information furnished to Series A Preferred Director in his or her capacity as a director of the Company to the extent of his or her lawful use of such information in such capacity. Nothing herein shall limit any such persons from fulfilling his or her fiduciary and other duties under applicable Law as members of the Board.

(c) For so long as the Investor holds any shares of Registrable Securities, and except for legally required disclosures (including in any registration statement) the Company, its Subsidiaries and their respective officers and directors shall not, and the Company will cause its and its Subsidiaries' employees not to, without the prior approval of the Investor, use the corporate name, trade name or logo of the Investor or any Permitted Holder, any of its affiliates,

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any of their investment funds or any portfolio companies of such investment funds in a public manner or format (including reference on or links to websites and press releases).

**Section 17. Termination.** Other than as expressly set forth in this Agreement, this Agreement shall terminate (a) upon the mutual written agreement of the Company and the Investor or (b) the date on which the Investor or any Permitted Holder no longer holds any Preferred Shares or Registrable Securities.

**Section 18. Miscellaneous.**

(a) No Inconsistent Agreements; Additional Rights. The Company represents and warrants that it has not entered into, and agrees that it will not enter into, any agreement with respect to its securities that violates or subordinates or is otherwise inconsistent with the rights granted to the Investor under this Agreement. If the Company enters into any agreement after the date hereof granting any Person registration rights with respect to any security of Parent which agreement contains any material provisions more favorable to such Person than those set forth in this Agreement, Parent will notify the Investor and will agree to such amendments to this Agreement as may be necessary to provide these rights to the Investor, at Investor's election.

(b) Governing Law. This Agreement shall be governed in all respects by the laws of the State of Delaware without regard to any choice of laws or conflict of laws provisions that would require the application of the laws of any other jurisdiction.

(c) Jurisdiction; Enforcement. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in any state or federal courts located in the Chancery Court of the State of Delaware and any state appellate court therefrom sitting in New Castle County in the State of Delaware (or, solely if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). In addition, each of the parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party or its successors or assigns, shall be brought and determined exclusively in any state or federal courts located in the Chancery Court of the State of Delaware and any state appellate court therefrom sitting in New Castle County in the State of Delaware (or, solely if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). The parties further agree that no party to this Agreement shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or



similar instrument. Each of the parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not

bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 18(g), (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party hereby consents to service being made through the notice procedures set forth in Section 18(g) and agrees that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses set forth in Section 18(g) shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated by this Agreement. EACH OF THE PARTIES KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) Successors and Assigns. Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties; provided, however, that the rights and obligations of parties under this Agreement shall not be assignable to any Person without the prior written consent of the other party, which consent may be conditioned on such assignee or successor entering into executed a joinder agreement to this Agreement substantially in the form of Exhibit B (the "Joinder Agreement").

(e) No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer, and this Agreement shall not confer, on any Person other than the parties to this Agreement any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no other Persons shall have any standing with respect to this Agreement or the transactions contemplated by this Agreement; provided, however that each Indemnified Party (but only, in the case of an Investor Indemnitee, if such Investor Indemnitee has complied with the requirements of Section 12(c), including the first proviso of Section 12(c)) shall be entitled to the rights, remedies and obligations provided to an Indemnified Party under Section 12, and each such Indemnified Party shall have standing as a third-party beneficiary under Section 12 to enforce such rights, remedies and obligations.

(f) Entire Agreement. This Agreement, the Purchase Agreement, the Certificate of Designation and the other documents delivered pursuant to the Purchase Agreement constitute the full and entire understanding and agreement among the parties hereto with regard to the subjects of this Agreement and such other agreements and documents.

(g) Notices. Except as otherwise provided in this Agreement, all notices, requests, claims, demands, waivers and other communications required or permitted under this Agreement shall be in writing and shall be mailed by reliable overnight delivery service or delivered by hand, facsimile or messenger, and email, as follows:

if to the Company:

Synchronoss Technologies, Inc.  
200 Crossing Blvd.  
Bridgewater, NJ 08807  
Facsimile No: (908) 231-0762  
Attention: Ronald Prague, Esq., Executive Vice President and General Counsel  
Email: ronald.prague@synchronoss.com

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

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP  
One Marina Park Drive, Suite 900  
Boston, MA 02210  
Attention: Marc Dupré  
Andrew Luh  
Facsimile: (617) 648-9199  
Email: mdupre@gunder.com  
aluh@gunder.com

if to the Investor:

c/o Siris Capital Group, LLC  
601 Lexington Avenue, 59th Floor, New York, NY 10022  
Facsimile No: 212-231-2680  
Attention: General Counsel  
Email: legalnotices@siriscapital.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019  
Attention: Andrew J. Nussbaum  
Igor Kirman  
Facsimile: (212) 403-2000  
Email: AJNussbaum@wlrk.com  
IKirman@wlrk.com

or in any such case to such other address, facsimile number or telephone as any party hereto may, from time to time, designate in a written notice given in a like manner. Notices shall be

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deemed given when actually delivered by overnight delivery service, hand or messenger, or when received by facsimile if promptly confirmed.

(h) Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party to this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of or acquiescence in any breach or default, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default. All remedies, either under this Agreement or by law or otherwise afforded to the Investor, shall be cumulative and not alternative.

(i) Expenses. The Company and the Investor shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby, except as otherwise provided in Section 4.

(j) Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the Investor or, in the case of a waiver, by the party against whom the waiver is to be effective. Any consent hereunder and any amendment or waiver of any term of this Agreement by the Company must be approved by a majority of directors voting who are not Series A Preferred Directors. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities at the time outstanding (including securities convertible into Registrable Securities), each future holder of all such Registrable Securities, and the Company.

(k) Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as parties hereto and only with respect to the specific obligations undertaken by such parties as set forth herein with respect to such parties and no other Person shall have any liability for any obligations or liabilities based upon, arising out of, or related to this Agreement or the Transactions and no Person who is not a named party to this Agreement, including without limitation any present or past director, officer, employee, incorporator, member, partner, direct or indirect equityholder (including any members, partners or stockholders), manager, employee, incorporator, controlling person, management company, general partner, affiliate, trustees, agent, attorney, advisor, permitted assign and predecessor of any named party to this Agreement (“Non-Party Affiliates”), shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose damages of an entity party against its owners or affiliates) for any damages arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, non-performance, interpretation, termination, enforcement, construction or execution or any of the transactions contemplated hereby and each party hereto hereby waives and releases all such damages, claims and obligations against any such Non-Party Affiliates.

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(l) Counterparts. This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile or in electronic format, each of which may be executed by less than all the parties, each of which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one instrument.

(m) Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms.

(n) Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to a Section or Schedule, such reference shall be to a Section or Schedule of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute, rule or regulation defined or referred to in this Agreement means such agreement, instrument or statute, rule or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Any reference to any section under the Securities Act or Exchange Act, or any rule promulgated thereunder, shall include any publicly available interpretive releases, policy statements, staff accounting bulletins, staff accounting manuals, staff legal bulletins, staff “no-action”, interpretive and exemptive letters, and staff compliance and disclosure interpretations (including “telephone interpretations”) of such section or rule by the SEC. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

[signature page follows]

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

SILVER PRIVATE HOLDINGS I, LLC

By: \_\_\_\_\_

Name:

Title:

SYNCHRONOSS TECHNOLOGIES, INC.

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Investor Rights Agreement]

**EXHIBIT A**

**Board**

Series A Preferred Directors

[·]  
[·]

Independent Directors

[·]  
[·]  
[·]  
[·]

Company Directors

[·]  
[·]  
[·]  
[·]

**Nominating Committee**

Members

[Investor's designee]  
[Investor's designee]  
[·]  
[·]

**EXHIBIT B**

**Form of Joinder Agreement to Investor Rights Agreement**

[ ], 20[ ]

Reference is hereby made to the Investor Rights Agreement, dated [·], 201[ ] (the "Investor Rights Agreement"), by and among Synchronoss Technologies, Inc., a Delaware corporation (the "Company"), and Silver Private Holdings I, LLC, a Delaware limited liability company (the "Investor").

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Investor Rights Agreement.

1. Joinder. The undersigned hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, it shall be deemed to be a party to the Investor Rights Agreement as if it were an original signatory thereto and hereby makes as of the date of the Investor Rights Agreement the representations and warranties and expressly assumes, and agrees to perform and discharge, all of the obligations and liabilities of the "Company" under the Investor Rights Agreement, including without limitation, any indemnity and contribution obligations under the Investor Rights Agreement. All references in the Investor Rights Agreement to the "Company" shall hereafter mean the undersigned.

2. Representations and Warranties. The undersigned hereby represents and warrants to the Investor that it has all requisite power and authority to execute, deliver and perform its obligations under this Joinder Agreement to the Investor Rights Agreement and it has duly and validly taken all necessary

action for the consummation of the transactions contemplated hereby and by the Investor Rights Agreement and that it has duly authorized, executed and delivered this Joinder Agreement to the Investor Rights Agreement and it is a valid and legally binding agreement enforceable against such undersigned in accordance with its terms.

3. Counterparts. This Joinder Agreement to the Investor Rights Agreement may be signed in one or more counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall constitute an original and all of which together shall constitute one and the same agreement.

4. Amendments. No amendment or waiver of any provision of this Joinder Agreement to the Investor Rights Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties thereto.

5. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

6. Severability of Provisions. In the event that any one of more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

7. Applicable Law. This Joinder Agreement to the Investor Rights Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in the State of Delaware. The parties hereto each hereby waive any right to

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trial by jury in any action, proceeding or counterclaim arising out of or relating to this Joinder Agreement to the Investor Rights Agreement.

[signature page follows]

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IN WITNESS WHEREOF, the undersigned have executed this Joinder Agreement to the Investor Rights Agreement as of the date first written above.

[•]

By: \_\_\_\_\_

Name:

Title:

The foregoing Joinder Agreement to the Investor Rights Agreement is hereby confirmed and accepted as of the date first above written.

SILVER PRIVATE HOLDINGS I, LLC

By: \_\_\_\_\_

Name:

Title:

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FOR IMMEDIATE RELEASE

**Synchronoss Technologies Announces Successful Conclusion  
of Strategic Alternatives Process to Maximize Value for Shareholders**

*Synchronoss to Double Down on Communications & Media Business*

*Divest Non-Core Assets Through Agreement to Sell Intralinks Business to Siris*

*Improve Balance Sheet Strength, Cash Position and Potential Profitability Through Siris Investment*

Bridgewater, N.J. — October 17, 2017 — Synchronoss Technologies, Inc. (NASDAQ: SNCR) (the “Company” or “Synchronoss”), the leader in mobile cloud innovation for mobile carriers, enterprises, retailers and OEMs globally, today announced that its Board of Directors (the “Board”) has concluded its review of strategic alternatives and determined that the best approach for the Company to achieve its goal of maximizing shareholder value is to focus on its core Communications & Media (“Comms & Media”) business, divest non-core assets and improve the Company’s balance sheet strength, cash position and potential profitability. Synchronoss’ core Comms & Media business, consisting of both predictable, mature segments and long-term growth opportunities, is an industry leader with longstanding relationships with leading communications and media companies around the world. The Company posted a presentation regarding this announcement that can be found on the Investor Relations section of the Synchronoss website.

Under the terms of the definitive agreements, investment funds affiliated with Siris Capital Group, LLC (“Siris”) will acquire all of the stock of the Company’s wholly-owned subsidiary, Intralinks Holdings, Inc., for approximately \$1 billion in consideration and make an investment in convertible preferred equity of Synchronoss in an amount of \$185 million. Siris’ investment would initially be convertible into approximately 19.8% of Synchronoss’ common stock. The sale of Intralinks is expected to close in mid-November 2017; the sale of the preferred stock is expected to close in the first quarter of 2018. Both transactions are subject to closing conditions.

“As part of the review of strategic alternatives, the Board considered all elements of our businesses, and concluded that the best approach to maximizing shareholder value is to concentrate on our core Comms & Media business,” said Stephen Waldis, Founder, Chairman and Chief Executive Officer of Synchronoss. “These transactions would provide Synchronoss with a strong balance sheet and the capital flexibility to pursue a more focused business strategy that builds on our existing footprint in Cloud, Messaging, and Digital Transformation while executing on key growth vectors in each of these areas. We believe that we will be well-positioned following this transaction to manage the predictable, mature business lines in Comms & Media and invest in the business for growth and expansion.”

Following the completion of the transactions, Synchronoss plans to advance its position as a leading and trusted technology solutions provider to communications and media companies, aligning the latest products and solutions with critical business initiatives and outcomes. The Company’s industry-leading customers include Tier 1 carrier and cable provider customers such as AT&T, Comcast, Frontier Communications, Verizon Wireless, SoftBank and Sprint. Following completion of the transactions, Synchronoss will have approximately 1,500 employees around the world.

As part of the strategic review, Synchronoss determined it will focus on three core product segments:

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- **Cloud:** Synchronoss sees highly promising opportunities to leverage its existing relationship with Verizon to extend its cloud relationship, innovate product features and value, and pursue new revenue streams. The Company is also focused on executing its identified international growth opportunities with revamped products.
  - **Messaging:** The messaging platform is a leader in white label email solutions with a highly developed multi-channel messaging solution. The Company is well-positioned for the next-wave evolution of messaging monetization and has identified opportunities in U.S. and Asian markets.
  - **Digital Transformation:** The Company is a core solutions provider to carrier consumer customers. Synchronoss continues to see strong cash flow generation, new customer acquisitions, including a recently-signed new contract with Sprint, and a healthy pipeline of additional growth opportunities.

Synchronoss remains committed to serving its leading communications and media customers globally, with an emphasis in its core markets in North America, Europe and an expanded presence in Asia. In particular, Japan continues to be a key market with a variety of near-term opportunities for the Company.

Mr. Waldis continued, “We plan to use the proceeds from the Intralinks transaction to retire term loan debt and use the Siris \$185 million investment to drive future growth opportunities in the Company’s Communications and Media business.”

“We have tremendous confidence in the future of Synchronoss and look forward to working collaboratively with the company as it transitions back to its core focus of providing mission critical solutions to communications and media customers,” said Frank Baker, co-founder and managing partner of Siris. “We are also excited to acquire Intralinks and see it reemerge as an independent company focused exclusively on serving financial services and enterprise customers with virtual data room and highly-secure collaboration solutions.”

#### **Terms of Agreements**

The acquisition of the Company’s Intralinks business will be made pursuant to a share purchase agreement between Synchronoss and Siris, under which Synchronoss has agreed to sell its wholly-owned subsidiary, Intralinks Holdings, Inc., to Siris for consideration consisting of cash in the amount of approximately \$977 million and an additional contingent payment of up to \$25 million in cash. Synchronoss previously acquired Intralinks on January 19, 2017 for a purchase price of approximately \$821 million. Upon the completion of the transaction, Leif O’Leary, the current Executive Vice President of Strategic Financials for Synchronoss, is expected to serve as Chief Executive Officer of Intralinks.

The Siris convertible preferred equity investment in Synchronoss in the amount of \$185 million is comprised of cash and stock. The stock portion consists of 5,994,667 shares of Synchronoss common stock that Siris previously purchased. The preferred stock will be convertible into shares of common stock at an

initial conversion price of \$18.00 per share, provided that the number of shares of common stock issuable upon conversion shall initially be capped at 19.9% of Synchronoss's issued and outstanding common stock.

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In the event the convertible preferred equity investment is terminated, Siris has the right to cause Synchronoss to repurchase from Siris, at a purchase price of \$14.56 per share, some or all of the 5,994,667 shares of Synchronoss common stock that Siris currently holds.

### **Approvals and Closing**

The transactions have been unanimously approved by Synchronoss' Board of Directors. The sale of Intralinks is expected to close in mid-November 2017; the sale of the preferred stock is expected to close in the first quarter of 2018. Both transactions are subject to closing conditions, including the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act and other foreign antitrust regulatory approvals.

### **Advisors**

Goldman Sachs & Co. and PJT Partners are serving as financial advisors to Synchronoss, and Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP is acting as its legal counsel. Evercore Partners, Macquarie Capital, Moelis & Company LLC, and RBC Capital Markets are acting as financial advisors to Siris. Wachtell, Lipton, Rosen & Katz is acting as corporate counsel to Siris and Greenberg Traurig, LLP is acting as financing counsel to Siris in connection with the transactions.

### **About Synchronoss Technologies, Inc.**

Synchronoss (NASDAQ: SNCR) is an innovative software company that helps both service providers and enterprises realize and execute their goals for mobile transformation now. Our simple, powerful and flexible solutions serve millions of mobile subscribers and a large portion of the Fortune 500 worldwide today. For more information, visit us at [www.synchronoss.com](http://www.synchronoss.com).

### **About Siris Capital Group, LLC | Siris Capital**

Siris is a leading private equity firm focused on making control investments in data, telecommunications, technology and technology-enabled business service companies. Integral to Siris' investment approach is its partnership with exceptional senior operating executives, or Executive Partners, who work with Siris to identify, validate and operate investment opportunities. Their significant involvement allows Siris to partner with management to add value both operationally and strategically. To learn more, visit us at [www.siriscapital.com](http://www.siriscapital.com).

### **Forward-looking Statements**

Certain statements contained in this press release are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, but are not limited to, plans, objectives, expectations and intentions and other statements contained in this report that are not historical facts, including statements regarding our exploration and evaluation of strategic alternatives and statements identified by words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," "estimates," "outlook" or words of similar meanings. These statements are based on the Company's current expectations and beliefs and various assumptions. There can be no assurance that the Company will realize these expectations or that these beliefs will prove correct. Numerous factors, many of which are beyond the Company's control, could cause actual results to differ materially from those expressed as forward-looking statements. These factors include, but are not

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limited to, the risk that the proposed transactions may not be completed in a timely manner, or at all; the failure to satisfy the conditions to the consummation of the proposed transactions, including the risk that a regulatory approval that may be required for the proposed transactions is not obtained, or could only be obtained subject to conditions that are not anticipated; the occurrence of any event, change or other circumstance that could give rise to the termination of the proposed transaction agreements; the effect of the announcement or pendency of the proposed transactions on the Company's business relationships, operating results, and business generally; the risk that revenue opportunities, cost savings, synergies and other anticipated benefits from the proposed transactions may not be fully realized or may take longer to realize than expected; risks related to the equity and debt financing and related guarantee arrangements entered into in connection with the proposed transactions; risks regarding the failure to obtain the necessary financing to complete the proposed transactions; risks that the proposed transactions disrupt current plans and operations of the Company; risks related to diverting management's attention from the Company's ongoing business operations; risks related to the outcome of any legal proceedings that may be instituted against the Company, its officers or directors related to the proposed transactions; risks associated with the ongoing and uncompleted nature of the Company's accounting review; fluctuations in the Company's financial and operating results; integration of the Company's Intralinks business and execution of the Company's cost reduction plan; the Company's substantial level of debt and related obligations, including interest payments, covenants and restrictions; uncertainty regarding increased business and renewals from existing customers; the dependence of the Company's Intralinks business on the volume of financial and strategic business transactions; disruptions to the implementation of the Company's strategic priorities and business plan caused by changes in the Company's senior management team; customer renewal rates and attrition; customer concentration; the Company's ability to maintain the security and integrity of the Company's systems; foreign currency exchange rates; the financial and other impact of previous and future acquisitions; competition in the enterprise and mobile solutions markets; the Company's ability to retain and motivate employees; technological developments; litigation and disputes and the costs related thereto; unanticipated changes in the Company's effective tax rate; uncertainties surrounding domestic and global economic conditions; other factors that are described in the "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" sections of the Company's Annual Report on Form 10-K for the year ended December 31, 2016, which is on file with the SEC and available on the SEC's website at [www.sec.gov](http://www.sec.gov). Additional factors may be described in those sections of the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2017, June 30, 2017 and September 30, 2017 to be filed with the SEC as soon as practicable. The Company does not undertake any obligation to update any forward-looking statements contained in this press release as a result of new information, future events or otherwise.

### **Investor and Media:**

Synchronoss Technologies, Inc.

Investor Relations

+1 800-575-7606

investor@synchronoss.com

or

Joele Frank, Wilkinson Brimmer Katcher  
Amy Feng / Scott Bisang / Greg Klassen  
+1 212-355-4449

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